

## 1 HOUSE BILL NO. 397

2 INTRODUCED BY K. DUDIK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE RELEASE OF AN ORIGINAL BIRTH  
5 CERTIFICATE UPON THE WRITTEN REQUEST OF AN ADULT ADOPTEE; ELIMINATING THE ABILITY OF  
6 A BIRTH PARENT TO REQUEST THAT AN ORIGINAL BIRTH CERTIFICATE FOR AN ADOPTEE NOT BE  
7 RELEASED WITHOUT A COURT ORDER; AND AMENDING SECTIONS 42-2-409, 42-5-109, 42-5-202,  
8 42-6-102, 42-6-109, AND 50-15-223, MCA."

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

11  
12 **Section 1.** Section 42-2-409, MCA, is amended to read:  
13 **"42-2-409. Counseling requirements.** (1) Counseling of the birth mother is required in department,  
14 agency, and direct parental placement adoptions. If any other parent is involved in an adoptive placement,  
15 counseling of that parent is encouraged.

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

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

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

24 (b) adoption procedures and options that are available to a parent through direct parental placement  
25 adoptions, including the right to an attorney and that legal expenses are an allowable expense that may be paid  
26 by a prospective adoptive parent as provided in 42-7-101 and 42-7-102;

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

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

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

- 1 (f) the options for contact and communication between the birth family and the adoptive family;
- 2 (g) postadoptive issues, including grief and loss, and the existence of a postadoptive counseling and
- 3 support program;
- 4 (h) the reasons for and importance of providing accurate medical and social history information under
- 5 42-3-101;
- 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 request after
- 8 reaching 18 years of age, ~~unless the birth parent has specifically requested in writing that the vital statistics~~
- 9 ~~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 the
- 11 number of hours of counseling. The report must specifically include the counselor's opinion of whether or not the
- 12 parent understood all of the issues and was capable of informed consent. The report must, on request, be
- 13 released to the person counseled, to the department, to an agency, or with the consent of the person counseled,
- 14 to an attorney for the prospective adoptive parents."

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16 **Section 2.** Section 42-5-109, MCA, is amended to read:

17 **"42-5-109. Decree of adoption.** A decree of adoption must state:

- 18 (1) the original name of the child;
- 19 (2) the name of the petitioner for adoption;
- 20 (3) whether the petitioner is married or unmarried;
- 21 (4) whether the petitioner is a stepparent of the child;
- 22 (5) the name by which the child is to be known;
- 23 (6) for a child born in Montana, a direction to the vital statistics bureau to issue a new birth certificate
- 24 unless the adoptee is 12 years of age or older and requests that a new certificate not be issued;
- 25 (7) the child's date and place of birth, if known;
- 26 (8) the effect of the decree of adoption as stated in 42-5-202; and
- 27 (9) that the adoption is in the best interests of the child; ~~and~~
- 28 ~~———(10) if known, whether either birth parent objects to the release of the original birth certificate information~~
- 29 ~~upon the adoptee reaching 18 years of age."~~

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1           **Section 3.** Section 42-5-202, MCA, is amended to read:

2           **"42-5-202. Effect of decree.** (1) After the decree of adoption is entered:

3           (a) the relationship of parent and child and all the rights, duties, and other legal consequences of the  
4 relation of parent and child exist between the adoptee and the adoptive parent and the kindred of the adoptive  
5 parent;

6           (b) the former parents and the kindred of the former parents of the adoptee, unless they are the adoptive  
7 parents or the spouse of an adoptive parent, are relieved of all parental responsibilities for the adoptee and have  
8 no rights over the adoptee except for a former parent's duty to pay arrearages for child support.

9           ~~(2) A decree of adoption must include notice to the vital statistics bureau if it is known that either birth  
10 parent objects to release of the information on the original birth certificate upon the adoptee reaching 18 years  
11 of age.~~

12           ~~(3)~~(2) The relationship of parent and child for the purposes of intestate succession is governed by Title  
13 72."

14

15           **Section 4.** Section 42-6-102, MCA, is amended to read:

16           **"42-6-102. Disclosure of records -- nonidentifying and identifying information -- consensual  
17 release.** (1) The department or an authorized person or agency may disclose:

18           (a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family member  
19 of an adoptee or birth parent;

20           (b) identifying information to an adoptee who has reached 18 years of age, a court-appointed confidential  
21 intermediary upon order of the court, or as provided in 50-15-121 and 50-15-122;

22           (c) identifying information limited to the specific information required to assist an adoptee to become  
23 enrolled in or a member of an Indian tribe; and

24           (d) identifying information to authorized personnel during a federal child and family services review.

25           (2) Information may be disclosed to any person who consents in writing to the release of confidential  
26 information to other interested persons who have also consented. Identifying information pertaining to an adoption  
27 involving an adoptee who is still a child may not be disclosed based upon a consensual exchange of information  
28 unless the adoptee's adoptive parent consents in writing."

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30           **Section 5.** Section 42-6-109, MCA, is amended to read:

1           **"42-6-109. Release of original birth certificate -- certificate of adoption.** (1) For a person adopted  
2 ~~on or before July 1, 1967, in~~ In addition to any copy of an adoptee's original birth certificate authorized for release  
3 by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original  
4 birth certificate ~~upon the written request~~ of an adoptee:;  
5           (a) upon the written request of a person who was adopted before October 1, 1985;  
6           (b) upon a court order for a person adopted on or after October 1, 1985, and before October 1, 1997;  
7           (c) for a person adopted on or after October 1, 1997, and before October 1, 2015, upon:  
8           (i) 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           (ii) a court order; and  
11           (d) upon the written request of a person who has attained 18 years of age and who was adopted on or  
12 after October 1, 2015.  
13           ~~(2) For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy of an~~  
14 ~~adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or~~  
15 ~~50-15-122, the department shall furnish a copy of the original birth certificate upon a court order.~~  
16 ~~———(3) For a person adopted on or after October 1, 1997, in addition to any copy of an adoptee's original~~  
17 ~~birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department~~  
18 ~~shall furnish a copy of the original birth certificate upon:~~  
19 ~~———(a) the written request of an adoptee who has attained 18 years of age unless the birth parent has~~  
20 ~~requested in writing that the original birth certificate not be automatically released; or~~  
21 ~~———(b) a court order.~~  
22           ~~(4)~~(2) For a person adopted on or after October 1, 1997, and subject to subsection (5), upon Upon the  
23 request of an adoptive parent or an adoptee who has attained 18 years of age, the department shall issue a  
24 certificate of adoption that states the date and place of adoption, the date of birth of the adoptee, the name of  
25 each adoptive parent, and the name of the adoptee as provided in the decree unless:  
26           (a) the adoptee was adopted on or after October 1, 1997, and before October 1, 2015; and  
27           (b) a birth parent requested in writing that the original birth certificate not be released without a court  
28 order.  
29           ~~(5) A birth parent may request in writing to the vital statistics bureau that the birth certificate for an~~  
30 ~~adoptee not be released without a court order.~~

1           ~~(6)~~(3) The department may release a copy of the adoptee's original birth certificate if release of this  
2 document is required to assist an adoptee to become enrolled in or a member of an Indian tribe."

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4           **Section 6.** Section 50-15-223, MCA, is amended to read:

5           **"50-15-223. Certificates of birth following adoption, legitimation, or determination or**  
6 **acknowledgment of paternity.** (1) The department shall establish a new certificate of birth for a person born  
7 in this state when the department receives the following:

8           (a) a certificate of adoption, as provided in 50-15-311, a certificate of adoption prepared and filed in  
9 accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption,  
10 together with the information necessary to identify the original certificate of birth and to establish a new certificate  
11 of birth; or

12           (b) a request that a new certificate be established if the request shows that:

13           (i) a district court, court of appropriate jurisdiction in another state, or administrative agency in this state  
14 or another state with appropriate jurisdiction has determined the paternity of the person and information  
15 necessary to identify the original certificate of birth is provided; or

16           (ii) both parents have acknowledged the paternity of the person and request that the surname be  
17 changed from that shown on the original certificate.

18           (2) The date of birth and the city and county of birth must be stated in the newly established certificate  
19 of birth. The department shall substitute the new certificate of birth for the original certificate of birth in the files.  
20 The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or  
21 paternity acknowledgment are only subject to inspection, except upon order of a district court, as provided by rule,  
22 as provided in Title 42, chapter 6, part 1, or as otherwise provided by state law.

23           (3) Upon receipt of a report of an amended decree of adoption, the department shall amend the  
24 certificate of birth as provided in rules adopted by the department.

25           (4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the original  
26 certificate of birth issued before the adoption to its place in the files and the certificate of birth issued upon  
27 adoption and evidence pertaining to the adoption proceeding may not be open to inspection, except:

28           (a) as provided in Title 42, chapter 6, part 1;

29           (b) upon order of a district court; or

30           (c) as provided by rule adopted by the department.

