

HOUSE BILL NO. 397

INTRODUCED BY K. DUDIK

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

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

**Section 1.** Section 42-2-409, MCA, is amended to read:

**"42-2-409. Counseling requirements.** (1) Counseling of the birth mother is required in department, agency, and direct parental placement adoptions. If any other parent is involved in an adoptive placement, counseling of that parent is encouraged.

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

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

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

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

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

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

(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~~ UNLESS THE BIRTH PARENT HAS SPECIFICALLY REQUESTED IN  
 10 WRITING THAT THE VITAL STATISTICS BUREAU WITHHOLD RELEASE OF THE ORIGINAL BIRTH CERTIFICATE. THE BIRTH  
 11 PARENT MAY CHANGE THE REQUEST AT ANY TIME BY NOTIFYING THE VITAL STATISTICS BUREAU IN WRITING OF THE  
 12 CHANGE.

13 (4) The counselor shall prepare a written report containing a description of the topics covered and the  
 14 number of hours of counseling. The report must specifically include the counselor's opinion of whether or not the  
 15 parent understood all of the issues and was capable of informed consent. The report must, on request, be  
 16 released to the person counseled, to the department, to an agency, or with the consent of the person counseled,  
 17 to an attorney for the prospective adoptive parents."  
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19 ~~Section 2. Section 42-5-109, MCA, is amended to read:~~

20 ~~"42-5-109. Decree of adoption. A decree of adoption must state:~~

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

1 ~~\_\_\_\_\_ (10) if known, whether either birth parent objects to the release of the original birth certificate information~~  
2 ~~upon the adoptee reaching 18 years of age."~~

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4 ~~\_\_\_\_\_ **Section 3.** Section 42-5-202, MCA, is amended to read:~~

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

6 ~~\_\_\_\_\_ (a) the relationship of parent and child and all the rights, duties, and other legal consequences of the~~  
7 ~~relation of parent and child exist between the adoptee and the adoptive parent and the kindred of the adoptive~~  
8 ~~parent;~~

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

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

15 ~~\_\_\_\_\_ (3)(2) The relationship of parent and child for the purposes of intestate succession is governed by Title~~  
16 ~~72."~~

17

18 **Section 2.** Section 42-6-102, MCA, is amended to read:

19 **"42-6-102. Disclosure of records -- nonidentifying and identifying information -- consensual**  
20 **release.** (1) The department or an authorized person or agency may disclose:

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

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

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

27 (d) identifying information to authorized personnel during a federal child and family services review; AND

28 (E) AN ORIGINAL BIRTH CERTIFICATE AS PROVIDED FOR IN 42-6-109.

29 (2) Information may be disclosed to any person who consents in writing to the release of confidential  
30 information to other interested persons who have also consented. Identifying information pertaining to an adoption

1 involving an adoptee who is still a child may not be disclosed based upon a consensual exchange of information  
 2 unless the adoptee's adoptive parent consents in writing."

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4 **Section 3.** Section 42-6-109, MCA, is amended to read:

5 **"42-6-109. Release of original birth certificate -- certificate of adoption.** (1) For a person adopted  
 6 ~~on or before July 1, 1967, in~~ In addition to any copy of an adoptee's original birth certificate authorized for release  
 7 by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original  
 8 birth certificate ~~upon the written request of an adoptee;~~

9 (a) upon the written request of a person who was adopted before October 1, 1985, OR 30 YEARS OR MORE  
 10 AGO, WHICHEVER DATE IS LATER;

11 (b) upon a court order for a person adopted on or after October 1, 1985, and before October 1, 1997;

12 AND

13 (c) for a person adopted on or after October 1, 1997, and before October 1, 2015; upon:

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

16 (ii) a court order; and

17 ~~—— (d) upon the written request of a person who has attained 18 years of age and who was adopted on or~~  
 18 ~~after October 1, 2015.~~

19 ~~(2) For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy of an~~  
 20 ~~adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or~~  
 21 ~~50-15-122, the department shall furnish a copy of the original birth certificate upon a court order.~~

22 ~~—— (3) For a person adopted on or after October 1, 1997, in addition to any copy of an adoptee's original~~  
 23 ~~birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department~~  
 24 ~~shall furnish a copy of the original birth certificate upon:~~

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

27 ~~—— (b) a court order.~~

28 ~~(4)(2) For a person adopted on or after October 1, 1997, and subject to subsection (5), upon~~ Upon the  
 29 request of an adoptive parent or an adoptee who has attained 18 years of age, the department shall issue a  
 30 certificate of adoption that states the date and place of adoption, the date of birth of the adoptee, the name of

1 each adoptive parent, and the name of the adoptee as provided in the decree unless:

2 ~~—— (a) the adoptee was adopted on or after October 1, 1997, and before October 1, 2015; and~~

3 ~~—— (b) a birth parent requested in writing that the original birth certificate not be released without a court~~  
4 ~~order.~~

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

7 ~~(3) A BIRTH PARENT MAY REQUEST IN WRITING TO THE VITAL STATISTICS BUREAU THAT THE BIRTH CERTIFICATE~~  
8 ~~FOR AN ADOPTEE NOT BE RELEASED WITHOUT A COURT ORDER. THE BIRTH PARENT MAY CHANGE THE REQUEST AT ANY~~  
9 ~~TIME BY NOTIFYING THE VITAL STATISTICS BUREAU IN WRITING OF THE CHANGE.~~

10 ~~(6)(3)(4)~~ The department may release a copy of the adoptee's original birth certificate if release of this  
11 document is required to assist an adoptee to become enrolled in or a member of an Indian tribe."  
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13 **Section 4.** Section 50-15-223, MCA, is amended to read:

14 **"50-15-223. Certificates of birth following adoption, legitimation, or determination or**  
15 **acknowledgment of paternity.** (1) The department shall establish a new certificate of birth for a person born  
16 in this state when the department receives the following:

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

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

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

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

27 (2) The date of birth and the city and county of birth must be stated in the newly established certificate  
28 of birth. The department shall substitute the new certificate of birth for the original certificate of birth in the files.  
29 The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or  
30 paternity acknowledgment are only subject to inspection, except upon order of a district court, as provided by rule,

1 as provided in Title 42, chapter 6, part 1, or as otherwise provided by state law.

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

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

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

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

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

10 (5) Upon written request of both parents and receipt of a sworn acknowledgment and other credible  
11 evidence of paternity signed by both parents of a child born outside of marriage, the department shall reflect the  
12 paternity on the child's certificate of birth if paternity is not already shown on the certificate of birth.

13 (6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth is to be  
14 established under this section and the date and place of birth have not been determined in the adoption or  
15 paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with the department, as  
16 provided in 50-15-204, before a new certificate of birth may be established. The new certificate of birth must be  
17 prepared on a form prescribed by the department.

18 (7) When a new certificate of birth is established by the department, the department shall direct that all  
19 copies of the original certificate of birth in the custody of any other custodian of vital records in this state be  
20 forwarded immediately to the department.

21 (8) (a) The department shall, upon request of the adopting parents, prepare and register a certificate of  
22 birth in this state for a person who was born in a foreign country and adopted through a district court in this state.

23 (b) The certificate of birth must be established by the department upon receipt of a certificate of adoption,  
24 conforming to the requirements of 50-15-311, from the court that reflects entry of an order of adoption, proof of  
25 the date and place of the child's birth, and a request for the establishment of a certificate of birth from the court,  
26 the adopting parents, or the adopted person, if the person is 18 years of age or older.

27 (c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual  
28 country of birth. A statement must be included on the certificate indicating that it is not evidence of United States  
29 citizenship for the child for whom it is issued.

30 (d) After registration of the certificate of birth in the new name of the adopted person, the department

1 shall seal and file the certificate of adoption, which is not subject to inspection, except upon order of the district  
2 court, as provided by rule, or as otherwise provided by state law.

3 (9) The department may promulgate rules necessary to implement this section."

4 - END -