



AN ACT UPDATING TERMINOLOGY USED TO REFER TO PATERNITY TESTING TO REFLECT AVAILABILITY OF BUCCAL SWAB TESTING IN LIEU OF A BLOOD DRAW; AND AMENDING SECTIONS 40-5-201, 40-5-210, 40-5-225, 40-5-226, 40-5-232, 40-5-233, 40-5-234, 40-5-236, 40-5-237, 40-5-238, 40-6-102, 40-6-105, 40-6-111, 40-6-112, 40-6-113, 40-6-114, 40-6-115, AND 40-6-119, MCA.

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

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

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

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

(2) (a) "Child" means:

(i) a person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age and still in high school;

(iii) a person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday; or

(iv) in a IV-D case, a person for whom:

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

(B) a public assistance payment has been made;

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

(D) the department has received a referral for IV-D services from an agency of another state or an Indian tribe under the provisions of the Uniform Interstate Family Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Reciprocal Enforcement of Support Act, or Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of public health and human services.

(4) "Director" means the director of the department of public health and human services or the director's authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearings officer" or "hearings examiner" means the hearings officer appointed by the department for the purposes of this chapter.

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

(8) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state or an Indian tribe having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity ~~blood~~ genetic test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. The genetic markers may be identified from a person's blood or tissue sample. The blood or tissue sample may be taken by blood drawing, buccal swab, or any other method approved by the American association of blood banks. Paternity ~~blood~~ genetic tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide for the medical, health, and support needs of a child under the laws of this or

any other state or under a support order;

(b) a support order for spousal maintenance of the custodial parent; or

(c) fines, fees, penalties, interest, and other funds and costs that the department is authorized under this chapter to collect by the use of any procedure available for the payment, enforcement, and collection of child support or spousal maintenance or support.

(14) "Support order" means an order, whether temporary or final, that:

(a) provides for the payment of a specific amount of money, expressed in periodic increments or as a lump-sum amount, for the support of the child, including an amount expressed in dollars for medical and health needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child;

(b) is issued by:

(i) a district court of this state;

(ii) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

(iii) an administrative agency pursuant to proceedings under this part; or

(iv) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar to those of the department under this part; and

(c) when the context requires, includes:

(i) judgments and orders providing periodic payments for the maintenance or support of the custodial parent of a child receiving services under this chapter; and

(ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the department is authorized under this chapter to collect by the use of any procedure available for the payment, enforcement, and collection of child support or spousal maintenance or support.

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated under the act."

**Section 2.** Section 40-5-210, MCA, is amended to read:

**"40-5-210. Standardized fee schedule -- rules.** (1) The department may charge an application fee to each person applying for services under 40-5-203, except that the fee may not be charged to persons who receive continuing services under 40-5-203(3). The application fee may be:

- (a) a flat dollar amount; or
- (b) an amount based on a sliding fee schedule that is based on the applicant's income level.

(2) If paternity is established or presumed under 40-5-234 for the alleged father, the fees for paternity ~~blood~~ genetic testing may be recovered from the parent, whether the alleged father or the mother, denying paternity of the alleged father. The total amount of the paternity ~~blood~~ genetic testing fee may not exceed the actual costs of the paternity ~~blood~~ genetic tests. A bill for a paternity ~~blood~~ genetic test is admissible in evidence without third-party foundation testimony.

(3) The department may not charge a handling fee for payment of support collected and distributed to an obligee who is not a recipient of public assistance.

(4) The department may charge an obligor a late payment fee for each late payment of support collected on behalf of any obligee.

(5) The department may establish a fee schedule in order to recover costs and expenses in excess of the application, handling, and late fees. The fees must be commensurate with costs or an average of the expenditures related to specific or routine activities.

(a) The department shall develop procedures for determining whether it is appropriate for either the obligor or the obligee to be responsible for payment of the fee. In developing the procedures, the department shall consider federal regulations promulgated under Title IV-D of the Social Security Act.

(b) In an action to establish paternity or to establish or enforce a child support obligation, whether in district court or by administrative process, the department must be awarded costs in the amount established in the fee schedule as part of any judgment, decree, or order whenever the department:

- (i) is a prevailing party in the action; or
- (ii) is not a party but incurs expenses and costs related to the action.

(6) The department may collect the fees awarded under this section by one of the following means:

(a) if the fee is owed by an obligor, the fee may be:

(i) collected through any remedy available to the department for the collection of child support arrearages; or

(ii) deducted from any payments made by the obligor before the payment is distributed to the obligee. Credit for the payment must be reduced by the amount of the deduction for the fee. The deduction for fees may not reduce any current support due to the obligee. The deduction for a late payment fee may not reduce any

current or past-due support due to the obligee.

(b) if the fee is owed by the obligee, the fee may be collected separately through any remedy available to the department for the collection of child support or, if the fee has been assessed and deducted from the collection by an entity other than the department, the department may withhold the fee amount out of any payment collected on behalf of the obligee. The obligor must receive full credit for the payment as if the withholding of fees did not occur.

(7) The department, upon a showing of necessity, may waive or defer any fee assessed under this section.

(8) The department may adopt rules necessary to implement fee schedules under this section.

(9) The fees and costs charged and collected under this section must be paid monthly into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected.

(10) A district court may not order the department to charge or collect fees, except as authorized under this section and rules implementing this section."

**Section 3.** Section 40-5-225, MCA, is amended to read:

**"40-5-225. Notice of financial responsibility -- temporary and final support obligations -- administrative procedure.** (1) In the absence of an existing support order, when the requirements of this section are met, the department may enter an order requiring a child's parent or parents to pay an amount each month for the support of the child. An order issued under this section must include a medical support order as required by 40-5-208.

(2) The department shall begin an action to establish a support order by serving a notice of financial responsibility on the parent or parents. The notice must include a statement:

(a) of the names of the child, the obligee, and, if different than the obligee, the child's guardian or caretaker relative;

(b) of the dollar amount of the support obligation to be paid each month for the child, if any;

(c) that the monthly support obligation, if any, is effective on the date of service of the notice, unless an objection is made and a hearing is requested, and may be collected during the proceeding that establishes the support obligation by any remedy available to the department for the enforcement of child support obligations;

(d) that in addition to or independent of child support, the parent or parents may be ordered to provide for the child's medical support needs;

(e) that any party may request a hearing to contest the amount of child support shown in the notice or to contest the establishment of a medical support order;

(f) that if a party does not file a request for a hearing in a timely manner, support, including medical support, will be ordered as declared in the notice or in accordance with the child support guidelines adopted under 40-5-209;

(g) that if a party does request a hearing, the other parties may refuse to participate in the proceedings and that the child support and medical support order will be determined using the information available to the department or provided at the hearing;

(h) that a party's refusal to participate is equivalent to consenting to entry of a child support and medical support order consistent with the department's determination; and

(i) that the parties are entitled to a fair hearing under 40-5-226.

(3) (a) The department may enter an order requiring a child's parent or parents to pay an amount each month for the temporary support of the child pending entry of a support order by the district court if:

(i) a support action is pending in district court and a temporary or permanent support obligation has not been ordered; or

(ii) a paternity action is pending and there is clear and convincing evidence of paternity based on paternity ~~blood~~ genetic tests or other evidence.

(b) The temporary support order must include a medical support order as required by 40-5-208.

(c) A temporary support order may be modified by the department as provided in 40-5-272, 40-5-273, 40-5-277, and 40-5-278 but remains a temporary support order subject to the provisions of this section.

(4) The department shall begin an action to establish a temporary support order by serving a notice of temporary support obligation on the parent or parents. In addition to the statements required in subsection (2), the notice must include a statement that:

(a) a party may request a hearing to show that a temporary support obligation is inappropriate under the circumstances; and

(b) the temporary support order will terminate upon the entry of a final support order or an order of nonpaternity. If the final order is retroactive, any amount paid for a particular period under the temporary support

order must be credited against the amounts due under the final order for the same period, but excess amounts may not be refunded. If an order of nonpaternity is issued or if the final support order states that periodic support obligation is not proper, the obligee shall refund to the obligor any improper amounts paid under the temporary support order, plus any costs that the obligor incurs in recovering the amount to be refunded.

(5) (a) If a temporary support order is entered or if proceedings are commenced under this section for a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if it finds that the parties to the marriage have:

- (i) reconciled without the marriage having been dissolved;
- (ii) made joint application to the department to vacate the order or dismiss the proceeding; and
- (iii) provided proof that the marriage has been resumed.

(b) The department may not vacate a support order or dismiss a proceeding under this subsection (5) if it determines that the rights of a third person or the child are affected. The department may issue a new notice of temporary support obligation under this section if the parties subsequently separate.

(6) A notice of financial responsibility and the notice of temporary support obligation may be served either by certified mail or in the manner prescribed for the service of a summons in a civil action in accordance with the Montana Rules of Civil Procedure.

(7) If prior to service of a notice under this section the department has sufficient financial information, the department's allegation of the obligor's monthly support responsibility, whether temporary or final, must be based on the child support guidelines established under 40-5-214. If the information is unknown to the department, the allegations of the parent's or parents' monthly support responsibility must be based on the greater of:

(a) the maximum amount of public assistance that could be payable to the child under Title 53 if the child was otherwise eligible for assistance; or

(b) the child's actual need as alleged by the custodial parent, guardian, or caretaker of the child.

(8) (a) A party who objects to a notice of financial responsibility or notice of temporary support obligation may file a written request for a hearing with the department:

- (i) within 20 days from the date of service of a notice of financial responsibility; and
- (ii) within 10 days from the date of service of a notice of temporary support obligation.

(b) If the department receives a timely request for a hearing, it shall conduct one under 40-5-226.

(c) If the department does not receive a timely request for a hearing, it shall order the parent or parents to pay child support, if any, and to provide for the child's medical needs as stated in the notice. The child support obligation must be the amount stated in the notice or determined in accordance with the child support guidelines adopted under 40-5-209.

(9) If the department is unable to enter an obligation in accordance with the child support guidelines because of default of a party, the department may, upon notice to the parties to the original order, substitute a support order made in accordance with the guidelines for the defaulted order.

(10) After establishment of an order under this section, the department may initiate a subsequent action on the original order to establish a child support or medical support obligation for another child of the same parents.

(11) A child support and medical support order under subsection (1) is effective as of the date of service of a notice of financial responsibility on the parent or parents and may be collected by any remedy available to the department for the enforcement of child support obligations. A final order is retroactive to the date of service of the notice of financial responsibility as provided in this subsection, except that the final order may also determine child support for a prior period as provided in 40-5-226(3).

(12) A child support and medical support order under subsection (1) continues until the child reaches 18 years of age or until the child's graduation from high school, whichever occurs later, but not later than the child's 19th birthday unless the child is emancipated by court order at an earlier time. A temporary support obligation established under subsection (3) continues until terminated as provided in subsection (5) or until the temporary support order is superseded by a final order, judgment, or decree."

**Section 4.** Section 40-5-226, MCA, is amended to read:

**"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear -- entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

(2) If a hearing is requested, it must initially be conducted by teleconference methods and is subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the hearings officer shall grant a de novo in-person hearing.

(3) The hearings officer shall determine the liability and responsibility, if any, of the parent or parents

under the notice and shall enter a final decision and order in accordance with the determination. The order may award support from the date of:

(a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

(b) the parties' separation if support is initially established under 40-5-225; or

(c) notice to the parties of a support modification request under 40-5-273.

(4) (a) Except as provided in subsection (4)(b), if the parent or parents fail to appear at the hearing or to timely file a request for a hearing, the hearings officer, upon a showing of valid service, shall enter a default decision and order declaring the amount stated in the notice to be final.

(b) In a multiple party proceeding under 40-5-225, if one party files a timely request for hearing, the matter must be set for hearing. Notice of the hearing must be served on the parties. If a party refuses to appear for the hearing or participate in the proceedings, the hearings officer shall determine child support and medical support orders based on the notice, information available to the department, and evidence provided at the hearing by the appearing parties. A party's refusal to appear is a consent to entry of child and medical support orders consistent with the hearings officer's determination. However, the default order may not be for more than the support requested in the notice unless the hearings officer finds that the evidence requires a larger amount.

(5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding to modify support under 40-5-272, 40-5-273, 40-5-277, and 40-5-278, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the uniform child support guidelines adopted by the department under 40-5-209. The hearings officer is not limited to the amounts stated in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the hearings officer finds by clear and convincing evidence that the application of the guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearings officer shall state the reasons for finding that the application of the guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar findings must also be made in a case in which

the parties have agreed to a support amount that varies from the guideline amount. The hearings officer may vary the application of the guidelines to limit the obligor's liability for past support to the proportion of expenses already incurred that the hearings officer considers just. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(6) In a hearing to enforce a support order or to establish paternity under this chapter, the department shall send a copy of the notice of hearing to the obligee by regular mail addressed to the obligee's last-known address. The obligee may attend and observe the hearing as a nonparty. This subsection does not limit participation of an obligee who is a party to the proceedings or who is called as a witness to testify.

(7) (a) Within 60 days after the hearing has been concluded, any posthearing briefs are received, and all the evidence submitted, except for good cause, the hearings officer shall enter a final decision and order. The determination of the hearings officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act. A copy of the final decision must be delivered or mailed to each party, each party's attorney, and the obligee if the obligee is not a party.

(b) A child support or medical support obligation established under this section is subject to the registration and processing provisions of part 9 of this chapter.

(8) A child support or medical support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under 40-5-272, 40-5-273, 40-5-277, and 40-5-278 when the department is providing services under IV-D for the enforcement of the order.

(9) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearings officer.

(10) A child support or medical support obligation determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearings officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure. When issuing a support order, the department shall consider whether any of the exceptions to immediate income withholding found in 40-5-411 apply, and, if an exception is applicable, the department shall include the exception in the support order.

(11) (a) Unless the hearings officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, each order establishing a child support obligation, whether temporary

or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearings officer.

(b) If an obligor is excepted from paying support through income withholding, the support order must include a requirement that whenever a party to the case is receiving IV-D services, support payments must be paid through the department as provided in 40-5-909.

(12) (a) If the department establishes paternity or establishes or modifies a child support obligation, the department's order must include a provision requiring each party other than the department to promptly file with the department and to update, as necessary, information on:

(i) identity of the party;

[(ii) social security number;]

(iii) residential and mailing addresses;

(iv) telephone number;

(v) driver's license number;

(vi) name, address, and telephone number of employer; and

(vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the obligor's and obligee's employer.

(b) The order must further direct that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the department's due process requirements for notice and service of process are met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the department.

(c) The department shall keep the information provided under subsection (12)(a) confidential except as necessary for purposes of Title IV-D of the Social Security Act.

(13) The hearings officer may:

(a) compel obedience to the hearings officer's orders, judgments, and process and to subpoenas and orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

(b) compel the attendance of witnesses at administrative hearings;

(c) compel obedience of subpoenas for paternity ~~blood~~ genetic tests;

(d) compel the production of accounts, books, documents, and other evidence;

(e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in accordance with the provisions of 2-4-104.

(f) compel the production of information requested by the department or another IV-D agency under 40-5-443.

(14) A contempt occurs whenever:

(a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer or of the department;

(b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;

(c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;

(d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply with discovery requests;

(e) a person or entity compelled by administrative subpoena from the department or another IV-D agency to produce financial information or other information needed to establish paternity or to establish, modify, or enforce a support order fails to do so;

(f) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time that income is required to be withheld and paid to the department and the payor fails to take the required action.

(g) a payor or labor union fails to provide information to the department or another IV-D agency when requested under 40-5-443[; or]

[(h) a financial institution uses information provided by the department pursuant to 40-5-924 for any other purpose without the authorization of the department].

(15) Before initiating a contempt proceeding, the department shall give the alleged contemnor notice by

personal service or certified mail of the alleged infraction and a reasonable opportunity to comply with the law and to cure the alleged infraction. In order to initiate a contempt proceeding, an affidavit of the facts constituting a contempt must be submitted to the hearings officer, who shall review it to determine whether there is cause to believe that a contempt has been committed. If cause is found, the hearings officer shall issue a citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be determined to be in contempt and required to pay a penalty of not more than \$500 for each count of contempt. The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

(16) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings officer finds the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than \$500 for each count found. The hearings officer's decision constitutes a final agency decision, subject to judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

(17) An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs of administrative hearings conducted under this chapter.

(18) The penalties charged and collected under this section must be paid into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

**Section 5.** Section 40-5-232, MCA, is amended to read:

**"40-5-232. Establishment of paternity -- notice of parental responsibility -- contents.** (1) When the paternity of a child has not been legally established under the provisions of Title 40, chapter 6, part 1, or otherwise, the department may proceed to establish paternity under the provisions of 40-5-231 through 40-5-237. An administrative hearing held under the provisions of 40-5-231 through 40-5-237 is a contested case within the

meaning of 2-4-102 and is subject to the provisions of Title 2, chapter 4, except as otherwise provided in 40-5-231 through 40-5-237.

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

(3) In a proceeding under 40-5-231 through 40-5-237, if an alleged father consents in writing to entry of an order declaring the alleged father to be the legal father of a child, the department may enter an order establishing legal paternity. As a part of a consent to entry of an order declaring paternity, the department shall provide information to the parents regarding the rights and responsibilities of an alleged father consenting to entry of an order declaring paternity. A consent to entry of an order declaring paternity is binding on a parent who executes it, whether or not the parent is a minor.

(4) Full faith and credit must be given to a determination of paternity made by any other state, whether presumed by law, established through voluntary acknowledgment, or established by administrative or judicial processes.

(5) The department shall commence proceedings to establish paternity by serving on an alleged father a notice of parental responsibility. The department may not serve the notice unless it has:

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

(6) Regardless of whether the department has grounds to or intends to commence a paternity proceeding against the alleged father, when the child support enforcement division in a case under Title IV-D of the Social Security Act receives a written claim from a child's mother that names a person as the alleged natural father of the child, the department shall promptly take reasonable steps to locate and notify the alleged father of the existence of the claim. The notification must be given to the alleged father in a manner that places the demands of individual privacy above the merits of public disclosure. The notification must include the name of the mother and the date of birth or the projected date of birth if the child has not yet been born.

(7) Service on the alleged father of the notice of parental responsibility must be made as provided in 40-5-231(2). The notice must include:

- (a) an allegation that the alleged father is the natural father of the child involved;
- (b) the child's name and place and date of birth;

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

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

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

(f) a statement that if the alleged father timely denies the allegation of paternity:

(i) the alleged father is subject to compulsory paternity ~~blood~~ genetic testing;

(ii) a paternity ~~blood~~ genetic test may result in a presumption of paternity; and

(iii) upon receipt of the paternity ~~blood~~ genetic test results, if the alleged father continues to deny paternity, the alleged father may request the department to refer the matter to district court for a determination of paternity.

(8) The alleged father may file a written denial of paternity with the department within 20 days after service of the notice of parental responsibility.

(9) When there is more than one alleged father of a child, the department may serve a notice of parental responsibility on each alleged father in the same consolidated proceeding or in separate proceedings. Failure to serve notice on an alleged father does not prevent the department from serving notice on any other alleged father of the same child."

**Section 6.** Section 40-5-233, MCA, is amended to read:

**"40-5-233. Establishment of paternity -- administrative hearing -- subpoena -- compulsory ~~blood~~ paternity genetic testing.** (1) (a) Paternity ~~blood~~ genetic testing may be requested by the alleged father, the mother, or the child through the child's custodian and may be made in conjunction with or in addition to a notice the department issues under 40-5-232. The request must be in writing and must be supported by a sworn statement of the requester that includes:

(i) an allegation of paternity and sufficient facts to establish a reasonable probability that the alleged father engaged in an act with the child's mother during the probable time of the child's conception that could have resulted in the child's conception; or

(ii) a denial of paternity and sufficient facts to establish a reasonable probability of the nonexistence of contact between the alleged father and the child's mother that could have resulted in the child's conception.

(b) If the department determines after a review of a sworn statement that there are sufficient facts to establish a reasonable probability of paternity or nonpaternity as claimed by the requesting party, the department shall issue a subpoena ordering the alleged father, the mother, or the child through the child's custodian to submit to ~~blood~~ paternity genetic testing.

(c) A pending request for ~~blood~~ paternity genetic testing under this section does not prevent the department from issuing a notice of parental responsibility under 40-5-232.

(d) Denial of a request for paternity ~~blood~~ genetic testing under this subsection (1) is not a finding of nonpaternity and does not prevent the issuance of a notice under 40-5-232. A denial does not affect the completion of any pending action initiated under 40-5-232.

(2) (a) The department may order an alleged father to appear for an administrative hearing when:

(i) the department determines that the sworn statement provided in subsection (1) does not contain sufficient facts to issue a ~~blood~~ genetic test subpoena and that additional examination of witnesses or evidence is necessary; or

(ii) the department receives a timely filed written denial of paternity in response to a notice under 40-5-232.

(b) The hearing must initially be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. At the request of a party, the hearings officer shall, at the close of a teleconference hearing, grant a de novo in-person hearing.

(c) The department may issue a subpoena ordering the alleged father to submit to paternity ~~blood~~ genetic testing if the testimony and other supplementary evidence demonstrate a reasonable probability:

(i) that the alleged father engaged in an act with the child's mother during the probable time of the child's conception that could have resulted in the child's conception; or

(ii) when the alleged father's paternity is presumed under 40-6-105, of the nonexistence of contact between the alleged father and the child's mother that could have resulted in the child's conception.

(d) For the purposes of this subsection (2), a reasonable probability of an act during the possible time of conception may be established by affidavit of the child's mother without need for the mother to appear at the hearing.

(3) Previous paternity actions under this part that did not result in a subpoena for paternity ~~blood~~ genetic testing do not prevent the department from recommencing a paternity action if the department believes it can

establish any of the factors listed in subsection (2)(c) or (2)(d).

(4) When there is reasonable cause to suggest that a ~~blood~~ genetic test sample of a person submitting to a ~~blood~~ genetic test was not the sample of the alleged father, mother, or child, an additional hearing may be held. The scope of the hearing is limited to questions involving the ~~blood-drawing~~ genetic testing or the chain of custody at the ~~blood-drawing~~ genetic testing site. The hearings officer may order retesting of any party.

(5) If the department does not receive a timely filed written denial of paternity or if an alleged father fails to appear at a scheduled hearing or for a scheduled paternity ~~blood~~ genetic test, the department may enter an order declaring the alleged father the legal father of the child. The order will take effect within 10 days after entry of the default unless the alleged father before the 10th day presents good cause for failure to make a timely denial or for failure to appear at the hearing or to undergo paternity ~~blood~~ genetic testing. The department may not enter an order under this section if there is more than one alleged father unless the default applies to only one of them and all others have been excluded by the results of paternity ~~blood~~ genetic testing. An order issued under the provisions of this section may be set aside as provided in 40-5-235(3).

(6) If the rights of others and the interests of justice so require, the department may apply to any district court under the provisions of 2-4-104 for an order compelling an alleged father to submit to paternity ~~blood~~ genetic testing. The court shall hear the matter as expeditiously as possible. If the court finds reasonable cause to believe that the alleged father is the natural or presumed father of the child, the court shall enter an order compelling the alleged father to submit to a paternity ~~blood~~ genetic test. Reasonable cause may be established by affidavit of the child's mother."

**Section 7.** Section 40-5-234, MCA, is amended to read:

**"40-5-234. Paternity ~~blood~~ genetic tests -- use of expert's affidavit -- effect of test results -- records -- presumption.** (1) The department shall appoint an expert who is qualified in examining genetic markers to conduct any paternity ~~blood~~ genetic test required by 40-5-233.

(2) An affidavit documenting the chain of custody of any blood or tissue specimen is admissible to establish the chain of custody.

(3) If the scientific evidence resulting from a paternity ~~blood~~ genetic test:

(a) conclusively shows that the alleged father could not have been the natural father, the question of paternity must be resolved accordingly. A finding under this subsection is sufficient to overcome a presumption

created by 40-6-105.

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

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

(4) The department may enter an order of nonpaternity based on a ~~blood~~ genetic test exclusion and may order the department of public health and human services to prepare an amended or substitute birth certificate.

(5) The department may enter in the support order registry established in 40-5-906 a written finding of any paternity presumption created by paternity ~~blood~~ genetic test results.

(6) A presumption of paternity established under this section is a sufficient basis for establishing a support order."

**Section 8.** Section 40-5-236, MCA, is amended to read:

**"40-5-236. Referral of paternity issue to district court -- record -- parties -- exclusion of other matters -- fees.** (1) If the scientific evidence resulting from a paternity ~~blood~~ genetic test does not exclude the alleged father and the alleged father continues to deny paternity, the alleged father shall file a written objection with the department within 20 days after service of the paternity ~~blood~~ genetic test results specifically requesting referral of the paternity issue to the district court. Upon receipt of the written objection, the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced at trial. Except as otherwise provided in 40-5-231 through 40-5-237, proceedings in the district court must be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

- (a) a copy of the notice of parental responsibility and the return of service of the notice;
- (b) the alleged father's written denial of paternity, if any;
- (c) the transcript of the administrative hearing;
- (d) the paternity ~~blood~~ genetic test results and any report of an expert based on the results; and
- (e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they

had been served with a summons and complaint. The department shall serve written notice upon the alleged father, as provided in 40-5-231(2), that the issue of paternity has been referred to the district court for determination.

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

(5) No other matter may be joined with an action to determine the existence or nonexistence of the parent and child relationship under this section. The parties shall institute an independent action to address other issues, including visitation and custody.

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

**Section 9.** Section 40-5-237, MCA, is amended to read:

**"40-5-237. District court paternity proceedings -- objection to tests -- additional tests -- expert's report -- admissibility of evidence.** (1) In a matter referred to the district court, if an alleged father objects to the procedures for or the results of a paternity ~~blood~~ genetic test, the alleged father shall file a written objection with the court within 20 days after service of the notice required by 40-5-236(3). The court shall order an additional paternity ~~blood~~ genetic test upon the alleged father's advance payment for additional testing if a written objection is timely filed or at the request of the department. The alleged father's advance payment must be returned to the alleged father if the test does not produce evidence of the alleged father's paternity. An additional test must be performed by the same or another expert who is qualified in paternity ~~blood~~ genetic testing. Failure of the alleged father to make a timely challenge is considered a waiver of any defense to the test results or test procedures, including the chain of custody.

(2) If an objection to the paternity ~~blood~~ genetic test is not timely filed, the paternity ~~blood~~ genetic test expert's completed and certified report of the results and conclusions of a paternity ~~blood~~ genetic test is admissible as evidence without additional foundation testimony or other proof of authenticity and accuracy if the laboratory in which the expert performed the test is accredited for parentage testing by the American association of blood banks. Accreditation may be established by verified statement or reference to published sources. This

subsection does not limit the right of a party to contest the identity of persons submitting to testing.

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

(4) When a paternity ~~blood~~ genetic test excludes an alleged father from possible paternity, the test is conclusive evidence of nonpaternity of the alleged father for all purposes in the district court."

**Section 10.** Section 40-5-238, MCA, is amended to read:

**"40-5-238. Confidentiality of paternity hearings and records of proceedings.** Because of the privacy interests involved, a hearing under 40-5-231 through 40-5-237 and this section for the purpose of determining paternity or reasonable cause to pursue paternity ~~blood~~ genetic testing is closed to the public. Attendance of others may be limited by the hearing officer as necessary to protect privacy rights. All papers and records of the proceedings, other than a final adjudication of paternity, are closed to public inspection, except that they may be opened upon consent of the parties and the hearing officer or, in exceptional cases, by order of the hearing officer."

**Section 11.** Section 40-6-102, MCA, is amended to read:

**"40-6-102. Definitions.** As used in this part, the following definitions apply:

~~(1) "Blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. The genetic markers may be identified from a person's blood or a tissue sample. The blood or tissue sample may be taken by blood drawing, buccal swab, or any other method approved by the American association of blood banks. A blood test may include but is not limited to the human leukocyte antigen test and DNA probe technology.~~

~~(2)(1) "Parent and child relationship" means the legal relationship existing between a child and the child's natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.~~

~~(2) "Paternity test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural~~

father of a child. The genetic markers may be identified from a person's blood or a tissue sample. The blood or tissue sample may be taken by blood drawing, buccal swab, or any other method approved by the American association of blood banks. A blood test may include but is not limited to the human leukocyte antigen test and DNA probe technology.

(3) "Support judgment" or "support order" means an order, whether temporary or final, that provides for the periodic payment of an amount of money expressed in dollars for the support of a child, including medical and health needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child."

**Section 12.** Section 40-6-105, MCA, is amended to read:

**"40-6-105. Presumption of paternity.** (1) A person is presumed to be the natural father of a child if any of the following occur:

(a) the person and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce or after a decree of separation is entered by a court;

(b) before the child's birth, the person and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(c) after the child's birth, the person and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) the child's mother and the child's alleged father have acknowledged the alleged father's paternity of the child in writing in accordance with subsection (1)(e) and the acknowledgment is filed with the department of public health and human services;

(ii) with the person's consent, the person is named as the child's father on the child's birth certificate; or  
 (iii) the person is obligated to support the child under a written voluntary promise or by court order;  
 (d) while the child is under the age of majority, the person receives the child into the person's home and openly represents the child to be the person's natural child;

(e) the child's mother and the child's alleged father acknowledge the alleged father's paternity of the child in a paternity acknowledgment form that is provided by the department of public health and human services. The department of public health and human services shall accept and file the completed form. As a part of a voluntary acknowledgment process, the department of public health and human services shall make written and oral information available to the parents regarding the rights and responsibilities of acknowledging paternity. If another person is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted. The presumption of paternity is created when the acknowledgment is filed with the department.

(f) the scientific evidence resulting from a ~~blood~~ paternity test, whether ordered by a court or administrative agency of competent jurisdiction or agreed to by the parties, shows a 95% or higher statistical probability of paternity;

(g) the person is presumed to be the child's natural father under the laws of the state or Indian territory in which the child was born.

(2) An acknowledgment is binding on a parent who executes it, whether or not the parent is a minor.

(3) Except for presumptions of paternity that are conclusive or irrebuttable under subsections (1)(g) and (5), a presumption under this section may be rebutted:

(a) in an appropriate action by a preponderance of the evidence; or

(b) by scientific evidence resulting from a ~~blood~~ paternity test that excludes the person as the child's natural parent.

(4) (a) A presumption of paternity established under this section is a sufficient basis for establishing a support order.

(b) If a presumption is later rebutted or set aside and the person is under an order to pay support for the child, the person may only be relieved of support installments that accrued from the date of the order declaring the presumption to be rebutted.

(5) (a) An acknowledgment of paternity under subsection (1)(e) may be rescinded by a signatory at any

time within 60 days after it was signed by filing a notice of withdrawal with the department of public health and human services. The notice of withdrawal must include an affidavit attesting that a copy of the notice was provided to any parent who signed the acknowledgment form.

(b) Without need for ratification by court or administrative proceedings, an acknowledgment of paternity under subsection (1)(e) becomes, as a matter of law, an irrebuttable presumption of paternity on the earlier of the date:

- (i) the acknowledgment is not timely rescinded as provided in subsection (5)(a); or
- (ii) a court or administrative judgment, decree, or order is entered that establishes paternity or a support order, when that proceeding includes the signatory.

(c) An irrebuttable presumption of paternity under this subsection (5) has the same force and effect as a district court judgment adjudicating paternity and may only be set aside for fraud, duress, or material mistake of fact. The burden of proof is on the person seeking to set the presumption aside. Except for good cause, legal responsibilities arising from the paternity acknowledgment may not be stayed pending the outcome of an action to set aside the presumption."

**Section 13.** Section 40-6-111, MCA, is amended to read:

**"40-6-111. Pretrial proceedings.** (1) As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing must be held. The court may order that the hearing be held before a referee. The public must be barred from the hearing. A record of the proceeding must be kept.

(2) Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order the witness to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that the testimony or evidence might tend to incriminate the witness, the court may grant the witness immunity from all criminal liability on account of the testimony or evidence the witness is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence that the witness is required to produce, except for perjury committed in the testimony. The refusal of a witness who has been granted immunity to obey an order to testify or produce evidence is a civil contempt of the court.

(3) Upon motion, a temporary support order may be issued at any time during a paternity action when

there is clear and convincing evidence of paternity in the form of ~~blood~~ paternity test results or other evidence. The temporary support order must be established according to the uniform child support guidelines adopted under 40-5-209."

**Section 14.** Section 40-6-112, MCA, is amended to read:

**"40-6-112. Blood Paternity tests.** (1) The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to ~~blood~~ paternity tests. The tests shall be performed by an expert qualified as an examiner of blood types, appointed by the court.

(2) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of blood types.

(3) In all cases the court shall determine the number and qualifications of the experts."

**Section 15.** Section 40-6-113, MCA, is amended to read:

**"40-6-113. Evidence relating to paternity.** Evidence relating to paternity may include:

(1) evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) ~~blood~~ paternity test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(4) medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(5) all other evidence relevant to the issue of paternity of the child."

**Section 16.** Section 40-6-114, MCA, is amended to read:

**"40-6-114. Pretrial recommendations.** (1) On the basis of the information produced at the pretrial hearing, the judge or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship

would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement must be made to the parties, which may include any of the following:

(a) that the action be dismissed with or without prejudice;

(b) that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or referee conducting the hearing shall consider the best interest of the child in the light of the factors enumerated in 40-6-116(5), discounted by the improbability, as it appears to the judge or referee, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on the alleged father.

(c) that the alleged father voluntarily acknowledge paternity of the child.

(2) If the parties accept a recommendation made in accordance with subsection (1), judgment must be entered accordingly.

(3) If a party refuses to accept a recommendation made under subsection (1) and ~~blood~~ paternity tests have not been taken, the court shall require the parties to submit to ~~blood~~ paternity tests, if practicable. Thereafter, the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action must be set for trial.

(4) If the scientific evidence resulting from the ~~blood~~ paternity tests conclusively shows that the defendant could not have been the father, then the action must be dismissed.

(5) The guardian ad litem may accept or refuse to accept a recommendation under this section.

(6) The informal hearing may be terminated and the action set for trial if the judge or referee conducting the hearing finds unlikely that all parties would accept a recommendation made under subsection (1) or (3)."

**Section 17.** Section 40-6-115, MCA, is amended to read:

**"40-6-115. Civil action.** (1) An action under this part is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to

testify. Sections 40-6-111(2), 40-6-112, and 40-6-113 apply to all actions brought under this part.

(2) Testimony relating to sexual access to the mother by an unidentified person at any time or by an identified person at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

(3) In an action against an alleged father, evidence offered by the alleged father with respect to a person who is not subject to the jurisdiction of the court concerning sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the alleged father has undergone and made available to the court ~~blood~~ paternity tests, the results of which do not exclude the possibility of the alleged father's paternity of the child. A person who is identified and is subject to the jurisdiction of the court must be made a defendant in the action.

(4) If a ~~blood~~ paternity test has been initially ordered under this part and a party objects to the ~~blood~~ paternity test results, the objection must be filed within 20 days after service of the ~~blood~~ paternity test results. If an objection is filed, and upon the alleged father's advance payment for additional testing, the court shall order an additional ~~blood~~ paternity test. If no objection is made, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy. This subsection does not limit the right of a party to contest the identity of persons submitting to testing.

(5) If the alleged father fails to answer or to appear at a scheduled hearing or for a scheduled ~~blood~~ paternity test, the district court shall enter an order declaring the alleged father the legal father of the child. The district court may not enter an order under this section if there is more than one alleged father unless the default applies to only one of them and all others have been excluded by the results of ~~blood~~ paternity testing.

(6) Bills for pregnancy, childbirth, and paternity ~~blood~~ testing are admissible as evidence without third-party foundation testimony and are prima facie evidence of the amounts incurred."

**Section 18.** Section 40-6-119, MCA, is amended to read:

**"40-6-119. Right to counsel -- transcript on appeal.** (1) At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall order the office of state public defender, pursuant to the Montana Public Defender Act, Title 47, chapter 1, to assign counsel for a party who is financially unable to obtain counsel.

(2) The court may order reasonable fees for experts and the child's guardian ad litem and other costs

of the action and pretrial proceedings, including ~~blood~~ paternity test costs, to be paid by the parties in proportions and at times determined by the court.

(3) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal. Transcript fees must be paid as provided in 3-5-604."

- END -

I hereby certify that the within bill,  
HB 0591, originated in the House.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

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Chief Clerk of the House

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

HOUSE BILL NO. 591

INTRODUCED BY L. SHELDON-GALLOWAY

AN ACT UPDATING TERMINOLOGY USED TO REFER TO PATERNITY TESTING TO REFLECT AVAILABILITY OF BUCCAL SWAB TESTING IN LIEU OF A BLOOD DRAW; AND AMENDING SECTIONS 40-5-201, 40-5-210, 40-5-225, 40-5-226, 40-5-232, 40-5-233, 40-5-234, 40-5-236, 40-5-237, 40-5-238, 40-6-102, 40-6-105, 40-6-111, 40-6-112, 40-6-113, 40-6-114, 40-6-115, AND 40-6-119, MCA.