

HOUSE BILL NO. 493

INTRODUCED BY E. HILL

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ADOPTION LAWS TO PROVIDE FOR 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, AND 42-6-109, 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.~~
- 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."

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

16 **"42-6-109. Release of original birth certificate -- certificate of adoption.** (1) For a person adopted
17 on or before ~~July 1, 1967~~ September 30, 1997, in addition to any copy of an adoptee's original birth certificate
18 authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish
19 a copy of the original birth certificate upon the written request of an adoptee.

20 ~~————(2) For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy of an
21 adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or
22 50-15-122, the department shall furnish a copy of the original birth certificate upon a court order.~~

23 ~~(3)(2)~~ For a person adopted ~~on or after October 1, 1997~~ between September 30, 1997, and October 1,
24 2013, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order
25 issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate
26 upon:

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

29 (b) a court order.

30 (3) For a person adopted on or after October 1, 2013, in addition to any copy of an adoptee's original birth

1 certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department
2 shall furnish a copy of the original birth certificate upon the written request of an adoptee who has attained 18
3 years of age.

4 (4) For a person adopted ~~on or after October 1, 1997, and subject to subsection (5);~~ between September
5 30, 1997, and October 1, 2013, unless the birth parent requested in writing that the original birth certificate not
6 be automatically released, or for a person adopted on or after October 1, 2013, upon the request of an adoptive
7 parent or an adoptee who has attained 18 years of age, the department shall issue a certificate of adoption that
8 states the date and place of adoption, the date of birth of the adoptee, the name of each adoptive parent, and the
9 name of the adoptee as provided in the decree.

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

12 ~~(6)~~(5) The department may release a copy of the adoptee's original birth certificate if release of this
13 document is required to assist an adoptee to become enrolled in or a member of an Indian tribe."

14 - END -