

Child and Family Services Policy Manual: Legal Procedure Relinquishment/Birth Parent Counseling

Relinquishment Definition	A relinquishment is a written document by which the parent voluntarily surrenders his or her rights to and responsibilities for a child.
Use	Relinquishments may be used when a parent wishes to surrender his or her rights to a child, and the agency can place the child for adoption.
Do Not Accept	<p>A relinquishment shall not be accepted and is considered invalid if accepted under the following circumstances:</p> <ol style="list-style-type: none"> 1. The child is less than 72 hours old, or if an Indian child, the child is less than 10 days old. See 305-1, Indian Child Welfare Act; 2. The parent is under medication which impairs his or her ability to understand the relinquishment or is under the influence of alcohol or other drugs; 3. The parent is under undue duress. For example, the parent is acting at the insistence of a child protection specialist or physician; 4. The parent's mental or emotional state is such that he or she may not understand what they are doing; or 5. It appears that the child cannot be stabilized in a permanent home within a reasonable amount of time due to the severity or combination of the following factors: <ul style="list-style-type: none"> • age; • physical handicap; • emotional make-up; • severe mental retardation; and • strength of ties to the birth family.
Circumstances under which relinquishment of an Indian child may be withdrawn	When the relinquishment is of a child who is defined as an Indian child under ICWA the consent may be withdrawn for any reason prior to the entry of termination of the parent-child legal relationship or the final decree of adoption and the child returned to the parent(s). After the entry of the final decree of adoption, the parent may withdraw consent upon the grounds that consent was obtained through fraud or duress.

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If the parent alleges fraud or duress, the parent may petition the court to vacate the decree of adoption within two years of the date of the adoption decree. Upon a finding that the consent was obtained through fraud or duress, the court must vacate the adoption decree and return the child to the parent. However, no adoption which has been effective for at least two years may be invalidated by alleging fraud or duress.

Unconditional
Relinquishments

Relinquishments **shall not** include any conditions requested or imposed by the relinquishing parent.

**Birth Parent
Counseling**

Prior to relinquishing her parental rights, a birth mother must be counseled. The counseling requirement may be waived by the court for good cause. Birth fathers are also encouraged to be counseled. Counseling must be for at least three hours and must include the following:

1. adoption procedures and options that are available to a parent through the Department, licensed child-placing agencies or direct parental placement, where appropriate;
2. the alternative of parenting rather than relinquishing the child and resources available to provide assistance or support for the parent and child, if appropriate;
3. the legal and personal effect and impact of terminating parental rights and of adoption;
4. information regarding contact and communication between the birth family and the adoptive family;
5. post-adoptive issues, including grief and loss;
6. the reasons for and importance of providing accurate medical and social history information;
7. operation of the confidential intermediary program; and
8. the fact that the adoptee may be provided a copy of his or her original birth certificate upon request after reaching age 18, unless the birth parent has specifically requested in writing that the vital statistics bureau withhold release of the original birth certificate.

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Written Report	The counselor shall prepare a written report containing a description of the topics covered and the numbers of hours of counseling. The report must specifically include the counselor's opinion of whether or not the parent understood all of the issues and was capable of informed consent. On request, the report must be released to the person counseled or others specified in Mont. Code Ann. § 42-2-409.
Only One Parent Wants to Relinquish	The parent wishing to relinquish should be advised of the legal rights of the other parent. The non-relinquishing parent has the right to attempt to assume custody and responsibility for the child if the other parent relinquishes. Therefore, the non-relinquishing parent must be given notice of any hearing to terminate parental rights and an opportunity to be heard on the issue of the custody of the child. If the non-relinquishing parent can establish that he or she is fit and able to properly care for the child and that it would be in the child's best interests, the non-relinquishing parent may gain custody of the child.
Termination based on unfitness, failure to establish relationship, etc	A court may terminate parental rights to a non-relinquishing parent, with whom the Department has not been involved, if the court makes a finding that the parent is unfit (Mont. Code Ann. § 42-2-608), that no legal parent-child relationship exists (Mont. Code Ann. § 42-2-609), that there was an irrevocable waiver of parental rights (Mont. Code Ann. § 42-2-611), or that a putative father failed to establish a substantial relationship with the child (Mont. Code Ann. § 42-2-610).
Minors	A parent who is a minor shall have the right to relinquish his or her child for adoption, and such relinquishment shall not be subject to revocation because the child is a minor. A minor parent does not need parental approval to relinquish their rights to a child, but if making a direct parental placement without the Department's involvement, they must have an attorney advising them prior to relinquishment.
Accepting a Relinquishment	A relinquishment must be taken on the <u>Affidavit of Waiver of all Parental Rights, Relinquishment of Child and Consent to Adoption</u> form. Relinquishments from either parent may not be accepted prior to 72 hours after the birth of the child. Each parent shall sign a separate relinquishment. Copies of each relinquishment are distributed as follows: <ul style="list-style-type: none"> • the original is filed with the petition; • one copy is given to the person signing; and

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- one copy remains in the county file.

Indian Child

If the child is an Indian child, the relinquishment must be signed in the presence of the judge of a court of competent jurisdiction and may not be accepted until **at least 10 days after the birth** of the child. See Section 305-1, Indian Child Welfare Act.

Read the Relinquishment

The child protection specialist must read the relinquishment in its entirety to the parent wishing to sign the relinquishment and determine if the parent understands it. The child protection specialist must attempt to answer all questions about the relinquishment. Should the parent appear confused about the relinquishment, the child protection specialist is encouraged to have the county attorney or the child protection specialist supervisor included in the discussion with the parent.

The child protection specialist shall ask the following questions of the parent in the presence of a witness. (The witness and notary may be the same person.)

1. Do you understand this document you are about to sign?
2. Do you sign this document of your own free will without any pressure by anyone to do so?
3. Do you fully understand that you give up all rights to your child, to notification of the court hearing granting custody to the Department, and that you are consenting to the adoption of this child?
4. Do you wish to see an attorney about this document?
5. Are you currently taking any medicine, either under doctor's orders or without doctor's orders?
6. Have you been drinking today or have you taken any drugs today?

If the answers to any of these questions lead the child protection specialist to believe the parent does not understand the relinquishment or is not competent to sign it, the signing should be postponed. A guardian ad litem may be appointed for the parent to ensure that he or she understands the consequences of signing a relinquishment.

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The person relinquishing must also be advised of the obligation to provide a medical and social history on the child and birth family, including tribal affiliation, if applicable.

Agreement Accepting Custody

The Department must enter into an agreement with the relinquishing parent in which the Department agrees to accept care, custody and support of the child until an adoption or other permanent arrangement for the child is finalized. The agreement is attached to the Relinquishment Form.

Parent's Court Appearance

The signing of a relinquishment does not preclude the appearance of the parent(s) at a hearing regarding the termination of his or her rights, if he or she chooses to attend or if the court determines the best interest of the child is served by requiring the parent to be present for the hearing. The attached relinquishment does, however, waive the right of the relinquishing parent of notice of subsequent court proceedings and hearings.

Report to Court, Birth Certificates

The child protection specialist should prepare a report to the court regarding relinquishment and a social and medical history, including the DPHHS-CFS-107, Birth Family Social and Medical History. The child protection specialist must obtain a certified copy of the birth certificate from the state where the child was born. If the child was born in Montana, birth certificates can be obtained from the Vital Statistics Bureau, PO Box 4210, 111 N. Sanders, Rm 205, Helena, Montana 59604.

The child protection specialist submits the following to the child protection specialist supervisor:

- the report to the court;
- written report of birth parent counseling unless the counseling requirement is waived by the court for good cause;
- social and medical history, including the completed DPHHS-CFS-107;
- a notarized copy of the relinquishment;
- a copy of the agreement with the Department for support and care of the child;
- a certified copy of the birth certificate; and
- enrollment information if the child is Indian.

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CAPS

Do not enter the relinquishment on CRTD until after the court hearing terminating parental rights. Use a court event of REL (relinquishment) and appropriate dispositions reflecting the court hearing (termination of mother's rights, termination of father's rights, permanent legal custody, etc).

References

Mont. Code Ann. § § 42-2-408 through 42-3-413
Mont. Code Ann. § § 42-2-608 through 42-2-611

MONTANA _____ JUDICIAL COURT, _____ COUNTY

IN THE MATTER OF)
_____,)
A MINOR CHILD.)

CAUSE NO.

AFFIDAVIT OF BIRTH MOTHER'S WAIVER OF ALL PARENTAL RIGHTS, RELINQUISHMENT OF CHILD AND CONSENT TO ADOPTION

_____, being first duly sworn upon oath, deposes and says:

1. I am the BIRTH MOTHER of the minor child, _____, who was born on the ___ day of _____, 20__, in _____ City, _____ State. I am ___ years old.
2. After carefully considering the best interests of my minor child, I hereby relinquish care custody and control of the minor child to the Montana Department of Public Health and Human Services, _____ address _____, _____ phone # _____.
3. I knowingly, unequivocally and voluntarily transfer permanent legal and physical custody to the Department of Public Health and Human Services.
4. I knowingly, unequivocally and voluntarily give my consent to have any court of competent jurisdiction terminate my parental rights and award permanent legal custody with the right to consent to adoption to the Department of Public Health and Human Services.
5. I understand that upon my signature of this document, it is final and may not be revoked or set aside for any reason, except as provided for in Mont. Code Ann. • 42-2-411, including failure of an adoptive parent to permit me to visit or communicate with the child.
6. I understand that this relinquishment will result in the extinguishment of all parental rights and obligations to this minor child, except for arrearage of child support unless waived by the person to whom they are owed.

7. I understand that this relinquishment will remain valid whether or not any agreement for visitation or communication with the child is later performed.

8. I have received at least three hours of counseling explaining, among other things, the legal and personal consequences of an adoption, my options and legal rights, available resources, and the rights my child will have to access records or search for me.

9. I have been advised of my obligation to provide the medical and social history information on the child and birth family and the importance of providing complete and accurate information.

10. I have not been offered any money or anything of value for execution of this document, except as may be allowed pursuant to Mont. Code Ann. . . . 42-7-101 and 42-7-102.

11. To the best of my knowledge, this child does not fall under the provisions of the Indian Child Welfare Act.

12. I understand that I have the right to be represented by a lawyer who does not represent the adoptive parents. I understand that the expense for such legal advice is an expense that may be paid for by the adoptive parents pursuant to Mont Code Ann. . . . 42-7-101 and 42-7-102.

13. I expressly waive my rights to notice of proceedings regarding this child including any hearing terminating my parental rights and awarding permanent legal custody to the (the adoptive parents).

14. I further waive my right to notice of any adoption proceeding and expressly consent that the adoption proceeding may be heard at any time without notice to me.

15. I acknowledge that I have received a copy of this document and a copy of a written agreement by the Department to accept temporary custody and provide support and care to the child until an adoption is finalized.

16. By signing this document I understand that I am relinquishing all of my parental rights to the minor child, _____. My relinquishment is voluntary, irrevocable and is given freely with a clear mind. I have not been unduly influenced by anyone in making this relinquishment.

Dated this ____ day of _____, 20__, at _____ (place/city/state) _____, at _____ (time) p.m./a.m..

Relinquishing parent

State of Montana
County of _____

On this ____ day of _____, _____; personally appeared _____ before me a notary public for the State of Montana; personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that she executed the same.

NOTARY PUBLIC FOR THE STATE OF MONTANA

Printed name of Notary Public

Residing at _____

My commission expires _____

I hereby verify that _____ was read the entire foregoing document and was asked specific questions regarding his/her understanding of the document and ramifications of signing the document. He/she was also asked whether legal counsel was desired; whether he/she was under the influence of any drugs, medication or alcohol; and whether he/she was signing under his/her own free will without undue pressure by anyone.

Date

Witness

AGREEMENT ACCEPTING TEMPORARY CUSTODY OF MINOR CHILD

Pursuant to the affidavit of waiver of all parental rights, relinquishment of child and consent to adoption, signed by _____, on _____, 20____, the Department hereby accepts the relinquishment and accepts custody of _____, a minor child, born 20____, to _____, residing at _____.

The Department agrees to support and care for _____ until such time as the child is adopted or other permanent legal custody arrangements are made for the child.

Dated this ____ day of _____, 20 ____.

Department of Public Health and Human Services

Parent/Legal Custodian of Minor Child

Address

Parent/Legal Custodian of Minor Child

City, State

MONTANA _____ JUDICIAL COURT, _____ COUNTY

IN THE MATTER OF)
_____,)
A MINOR CHILD.)

CAUSE NO.

AFFIDAVIT OF BIRTH MOTHER'S WAIVER OF
ALL PARENTAL RIGHTS, RELINQUISHMENT OF
CHILD AND CONSENT TO ADOPTION -- WAIVER OF
COUNSELING REQUIREMENT

_____, being first duly sworn upon oath, deposes and says:

1. I am the BIRTH MOTHER of the minor child, _____, who was born on the day of _____, 20__, in ___City___, ___State___. I am ___ years old.
2. After carefully considering the best interests of my minor child, I hereby relinquish care custody and control of the minor child to the Montana Department of Public Health and Human Services, address, phone #.
3. I knowingly, unequivocally and voluntarily transfer permanent legal and physical custody to the Department of Public Health and Human Services.
4. I knowingly, unequivocally and voluntarily give my consent to have any court of competent jurisdiction terminate my parental rights and award permanent legal custody with the right to consent to adoption to the Department of Public Health and Human Services.
5. I understand that upon my signature of this document, it is final and may not be revoked or set aside for any reason, except as provided for in Mont. Code Ann. • 42-2-411, including failure of an adoptive parent to permit me to visit or communicate with the child.

6. I understand that this relinquishment will result in the extinguishment of all parental rights and obligations to this minor child, except for arrearage of child support unless waived by the person to whom they are owed.

7. I understand that this relinquishment will remain valid whether or not any agreement for visitation or communication with the child is later performed.

8. I understand that I have the right to receive at least three hours of counseling prior to the execution of this relinquishment of my parental rights, unless waived by the court for good cause. I have been advised of this right and the requirements of Mont. Code Ann. • 42-2-409, and request that the court waive the counseling requirement for the following reasons:

9. I have been advised of my obligation to provide the medical and social history information on the child and birth family and the importance of providing complete and accurate information.

10. I have not been offered any money or anything of value for execution of this document, except as may be allowed pursuant to Mont. Code Ann. • • 42-7-101 and 42-7-102.

11. To the best of my knowledge, this child does not fall under the provisions of the Indian Child Welfare Act.

12. I understand that I have the right to be represented by a lawyer who does not represent the adoptive parents. I understand that the expense for such legal advice is an expense that may be paid for by the adoptive parents pursuant to Mont. Code Ann. • • 42-7-101 and 42-7-102.

13. I expressly waive my rights to notice of proceedings regarding this child including any hearing terminating my parental rights and awarding permanent legal custody to the (the adoptive parents).

14. I further waive my right to notice of any adoption proceeding and expressly consent that the adoption proceeding may be heard at any time without notice to me.

15. I acknowledge that I have received a copy of this document and a copy of a written agreement by the Department to accept temporary custody and provide support and care to the child until an adoption is finalized.

16. By signing this document I understand that I am relinquishing all of my parental rights to the minor child, _____. My relinquishment is voluntary, irrevocable and is given freely with a clear mind. I have not been unduly influenced by anyone in making this relinquishment.

Dated this ____ day of _____, 20____, at _____ (place/city/state)____, at _____ (time) p.m./a.m._____.

Relinquishing parent

State of Montana
County of _____

On this ____ day of _____, _____; personally appeared _____ before me a notary public for the State of Montana; personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that she executed the same.

NOTARY PUBLIC FOR THE STATE OF MONTANA

Printed name of Notary Public
Residing at _____
My commission expires _____

I hereby verify that _____ was read the entire foregoing document and was asked specific questions regarding his/her understanding of the document and ramifications of signing the document. He/she was also asked whether legal counsel was desired; whether he/she was under the influence of any drugs, medication or alcohol; and whether he/she was signing under his/her own free will without undue pressure by anyone.

Date

Witness

AGREEMENT ACCEPTING TEMPORARY CUSTODY OF MINOR CHILD

Pursuant to the affidavit of waiver of all parental rights, relinquishment of child and consent to adoption, signed by _____, on _____, 20____, the Department hereby accepts the relinquishment and accepts custody of _____, a minor child, born 20____, to _____, residing at _____.

The Department agrees to support and care for _____ until such time as the child is adopted or other permanent legal custody arrangements are made for the child.

Dated this ____ day of _____, 20 ____.

Department of Public Health and Human Services

Parent/Legal Custodian of Minor Child

Address

Parent/Legal Custodian of Minor Child

City, State

MONTANA _____ JUDICIAL COURT, _____ COUNTY

IN THE MATTER OF)
_____,)
A MINOR CHILD.)

CAUSE NO.

AFFIDAVIT OF BIRTH FATHER'S WAIVER OF ALL
PARENTAL RIGHTS, RELINQUISHMENT OF CHILD,
AND CONSENT TO ADOPTION

_____, being first duly sworn upon oath, deposes and says:

1. I am the FATHER of the minor child, _____, who was born on the ___ day of
, 20__, in ___ City ___, ___ State _____. I am ___ years old.

2. After carefully considering the best interests of my minor child, I hereby relinquish care
custody and control of the minor child to the Montana Department of Public Health and Human
Services, ___ address _____, ___ phone # _____.

3. I knowingly, unequivocally and voluntarily transfer permanent legal and physical custody
to the Department of Public Health and Human Services.

4. I knowingly, unequivocally and voluntarily give my consent to have any court of
competent jurisdiction terminate my parental rights and award permanent legal custody with the right
to consent to adoption to the Department of Public Health and Human Services.

5. I understand that upon my signature of this document, it is final and may not be revoked
or set aside for any reason, except as provided for in Mont. Code Ann. • 42-2-411, including failure of
an adoptive parent to permit me to visit or communicate with the child.

6. I understand that this relinquishment will result in the extinguishment of all parental rights and obligations to this minor child, except for arrearage of child support unless waived by the person to whom they are owed.

7. I understand that this relinquishment will remain valid whether or not any agreement for visitation or communication with the child is later performed.

8. I know that I may receive counseling related to relinquishment and adoption prior to executing this relinquishment, but decline counseling.

9. I have been advised of my obligation to provide the medical and social history information on the child and birth family and the importance of providing complete and accurate information.

10. I have not been offered any money or anything of value for execution of this document, except as may be allowed pursuant to Mont. Code Ann. •• 42-7-101 and 42-7-102.

11. To the best of my knowledge, this child does not fall under the provisions of the Indian Child Welfare Act.

12. I expressly waive my rights to notice of proceedings regarding this child including any hearing terminating my parental rights and awarding permanent legal custody to the Department of Public Health and Human Services.

13. I further waive my right to notice of any adoption proceeding and expressly consent that the adoption proceeding may be heard at any time without notice to me.

14. I acknowledge that I have received a copy of this document and a copy of a written agreement by the of to accept temporary custody and provide support and care to the child until an adoption is finalized.

15. By signing this document I understand that I am relinquishing all of my parental rights to the minor child, _____. My relinquishment is voluntary, irrevocable and is given freely with a clear mind. I have not been unduly influenced by anyone in making this relinquishment.

Dated this ____ day of _____, 20____, at _____ (place/city/state)____, at _____ (time) p.m./a.m._____.

Relinquishing parent

State of Montana
County of _____

On this ____ day of _____, _____; personally appeared _____ before me a notary public for the State of Montana; personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that she executed the same.

NOTARY PUBLIC FOR THE STATE OF MONTANA

Printed name of Notary Public
Residing at _____
My commission expires _____

I hereby verify that _____ was read the entire foregoing document and was asked specific questions regarding his/her understanding of the document and ramifications of signing the document. He/she was also asked whether legal counsel was desired; whether he/she was under the influence of any drugs, medication or alcohol; and whether he/she was signing under his/her own free will without undue pressure by anyone.

Date

Witness

AGREEMENT ACCEPTING TEMPORARY CUSTODY OF MINOR CHILD

Pursuant to the affidavit of waiver of all parental rights, relinquishment of child and consent to adoption, signed by _____, on _____, 20____, the Department hereby accepts the relinquishment and accepts custody of _____, a minor child, born _____ 20____, to _____, residing at _____. The Department agrees to support and care for _____ until such time as the child is adopted or other permanent legal custody arrangements are made for the child.

Dated this ____ day of _____, 20 ____.

Department of Public Health and Human Services

Parent/Legal Custodian of Minor Child

Address

Parent/Legal Custodian of Minor Child

City, State