

SENATE BILL 129

Introduced by Fritz, et al.

1/17	Introduced
1/18	Referred to Public Health, Welfare & Safety
1/18	First Reading
1/18	Fiscal Note Requested
1/23	Fiscal Note Received
1/24	Fiscal Note Printed
1/25	Hearing
2/05	Committee Report--Bill Not Passed
2/05	Adverse Committee Report Adopted

1 *Senate* BILL NO. *129* *Stuck*
 2 INTRODUCED BY *Bill Madam to Representative Jacobson*
 3 *Donald Squires Nelson J. Biber*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFICE OF *DOES*
 5 THE CHILDREN'S ADVOCATE; DEFINING THE *Whalen* POWERS AND DUTIES OF *Family*
 6 THE CHILDREN'S ADVOCATE; AUTHORIZING THE CHILDREN'S ADVOCATE *Doni*
 7 TO INVESTIGATE THE NEED FOR LEGAL REPRESENTATION OF A CHILD
 8 AND TO REPRESENT A CHILD IN PROCEEDINGS INVOLVING ADOPTION,
 9 CHILD SUPPORT, DIVORCE, VISITATION, REVIEW OF FOSTER CARE
 10 STATUS, THE INTERSTATE COMPACT ON JUVENILES, AND REVIEW OF
 11 THE CHILD'S VOLUNTARY ADMISSION TO A MENTAL HEALTH FACILITY;
 12 AND AMENDING SECTION 40-4-205, MCA."

STATEMENT OF INTENT

15 A statement of intent is required for this bill because
 16 [section 10] grants authority to the children's advocate to
 17 adopt rules to implement [sections 1 through 10]. It is the
 18 intent of the legislature that rules adopted by the
 19 children's advocate be based on existing ombudsman and
 20 advocacy programs so that the program operates in a manner
 21 similar to and compatible with other state advocacy
 22 programs.

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

NEW SECTION. **Section 1.** Definitions. As used in

[sections 1 through 10], the following definitions apply:

- 2 (1) "Child" means a person who is under 18 years of
- 3 age.
- 4 (2) "Children's advocate" means the person appointed to
- 5 hold the office created in [section 2].
- 6 (3) "Mental health facility" has the meaning provided
- 7 in 53-21-102.

8 NEW SECTION. **Section 2.** Children's advocate --
 9 appointment -- term of office -- vacancies. (1) There is a
 10 children's advocate in the governor's office.

11 (2) The governor shall appoint the children's advocate
 12 and set his salary.

13 (3) The children's advocate shall serve a term of 3
 14 years and may be reappointed at the discretion of the
 15 governor.

16 (4) A vacancy in the office must be filled in the same
 17 manner as the original appointment.

18 NEW SECTION. **Section 3.** Qualifications. To be
 19 qualified for appointment as the children's advocate, a
 20 person must:

- 21 (1) be a licensed attorney;
- 22 (2) have been admitted to the practice of law in
 23 Montana for at least 5 years immediately prior to assuming
 24 the office of the children's advocate; and
- 25 (3) be experienced in areas of law that affect the

1 interests, rights, duties, or privileges of children.

2 NEW SECTION. **Section 4. Children's advocate -- powers.**

3 The children's advocate may:

4 (1) accept appointment by a Montana court to serve as
5 attorney or guardian ad litem to represent the interest of a
6 child;

7 (2) except when the children's advocate has been
8 appointed as guardian ad litem of a child whose estate is to
9 be protected, accept appointment by a Montana court to serve
10 as conservator of the estate of a child as provided for
11 under Title 72;

12 (3) investigate, initiate, or intervene in any legal or
13 administrative action in which a child's interest may be
14 affected;

15 (4) issue publications and reports of studies and
16 research that promote protection of or advocacy on behalf of
17 children;

18 (5) initiate activities or cooperate with other
19 agencies or organizations, public or private, to:

20 (a) assess reports of suspected institutional child
21 abuse or neglect;

22 (b) promote the establishment and operation of
23 institutional child advocacy programs;

24 (c) develop alternatives to the institutionalization of
25 children;

1 (d) develop plans for corrective action if reports of
2 institutional child abuse or neglect are made and make
3 recommendations to the attorney general for criminal or
4 civil action;

5 (e) plan and conduct educational programs designed to
6 improve or increase the quality and frequency of advocacy on
7 behalf of the legal interests of children;

8 (f) establish prevention programs designed to reduce
9 the incidence among children of drug or alcohol use,
10 suicide, poor school attendance, smoking, adolescent
11 pregnancy, juvenile delinquency or juvenile crime, or other
12 similar activity;

13 (g) encourage early intervention and development of
14 programs to reduce the incidence of problems listed in
15 subsection (5)(f) by identifying the population of children
16 most at risk; and

17 (h) facilitate interdepartmental coordination of
18 services to prevent children from engaging in the activities
19 listed in subsection (5)(f);

20 (6) assist the governor in planning, coordinating, and
21 operating services and programs that affect children, with
22 emphasis on preventing children from engaging in the
23 activities listed in subsection (5)(f);

24 (7) evaluate existing programs and services for
25 children and make recommendations for improvement to the

1 governor and appropriate state agencies;

2 (8) recommend legislation concerning the legal
3 interests or rights of children as he considers necessary
4 and desirable;

5 (9) encourage and stimulate recognition of the legal
6 rights and interests of children and the availability and
7 quality of legal representation of children; and

8 (10) contract for services and materials and employ a
9 staff for the purpose of carrying out the provisions of
10 [sections 1 through 10].

11 NEW SECTION. Section 5. Children's advocate -- duties.

12 The children's advocate shall:

13 (1) review all reports in which a child's legal rights
14 or interests may be infringed and take appropriate or
15 necessary action to protect the rights or interests of the
16 child; and

17 (2) at least once a year, prepare and transmit to the
18 governor, attorney general, legislature, and chief justice
19 of the Montana supreme court reports describing the
20 activities of the children's advocate and the discharge of
21 all responsibilities assigned to the children's advocate by
22 law or directive.

23 NEW SECTION. Section 6. Acceptance of gifts,

24 donations, and grants. The children's advocate may accept
25 gifts, donations, and grants for any purpose connected with

1 the work, programs, or activities of his office.

2 NEW SECTION. Section 7. Assistant children's advocates

3 -- appointment -- qualifications. (1) The governor or the
4 children's advocate with the consent of the governor may
5 appoint assistant children's advocates as necessary to carry
6 out the duties imposed on the children's advocate under
7 [section 5].

8 (2) To be qualified for appointment as an assistant
9 children's advocate, a person must be:

10 (a) a licensed attorney; and

11 (b) admitted to the practice of law in Montana.

12 NEW SECTION. Section 8. Representation of child --

13 investigation -- appointment -- duties -- costs. (1) The
14 court may, on its own motion, the motion of any party, or
15 the motion of the children's advocate, order the children's
16 advocate to conduct an investigation and file a written
17 report with the court concerning whether appointment of an
18 attorney, a guardian ad litem, or the children's advocate
19 would be in the best interests of a child who is the subject
20 of a petition in adoption, a proceeding involving the
21 Interstate Compact on Juveniles, a review of foster care
22 status as provided in 41-3-1115, or a review of the child's
23 voluntary admission to a mental health facility as provided
24 in [section 9]. The report must be confidential.

25 (2) The court may, on its own motion, the motion of any

1 party, or the motion of the children's advocate, appoint an
 2 attorney, a guardian ad litem, or the children's advocate to
 3 represent a child referred to in subsection (1).

4 (3) If the court appoints an attorney, a guardian ad
 5 litem, or the children's advocate, that person:

6 (a) may conduct investigations he considers necessary
 7 to ascertain the facts;

8 (b) may interview or observe the child involved;

9 (c) shall have access to court, medical, psychological,
 10 law enforcement, and social services records pertaining to
 11 the child, his siblings, and his parents or custodians;

12 (d) shall make written reports to the court concerning
 13 the child's welfare;

14 (e) may appear and participate in all proceedings to
 15 the degree necessary to adequately represent the child and
 16 make recommendations to the court concerning the child's
 17 welfare; and

18 (f) shall perform other duties as directed by the
 19 court.

20 (4) If the court orders an investigation or appoints an
 21 attorney, a guardian ad litem, or the children's advocate to
 22 represent a child, the court shall enter an award for costs
 23 and fees in favor of the attorney, guardian ad litem, or
 24 children's advocate. The order must be made against all
 25 parties, except that if a party is indigent, the costs must

1 be waived. If the court orders an investigation or appoints
 2 the children's advocate to represent the child, the clerk of
 3 the court, upon receipt of payment, shall transmit the
 4 payment to the children's advocate.

5 NEW SECTION. **Section 9. Voluntary admission of a minor**
 6 **for mental health treatment -- review -- written report.** (1)
 7 The medical and legal status of a patient in a mental health
 8 facility who is less than 18 years of age, who was
 9 voluntarily admitted in accordance with 53-21-112, and whose
 10 application for admission was made by his parent or legal
 11 guardian must be reviewed by the mental health facility at
 12 least once every 3 months.

13 (2) The written review must include:

14 (a) the child's name and date of birth;

15 (b) the names and address or addresses of the child's
 16 parents;

17 (c) the name and address of the mental health facility;

18 (d) the name of the primary physician who is
 19 responsible for treatment of the child;

20 (e) the date of the child's admission to the mental
 21 health facility;

22 (f) the diagnosis of the child;

23 (g) the services provided to the child and the child's
 24 parents;

25 (h) a plan for release from the mental health facility;

- 1 (i) justification for continued treatment;
- 2 (j) the date the review was written; and
- 3 (k) the name of the person who wrote the review.
- 4 (3) The written review must be forwarded by the mental
- 5 health facility to the children's advocate.

6 NEW SECTION. Section 10. Grant of rulemaking
 7 authority. The children's advocate may adopt rules to
 8 implement [sections 1 through 10].

9 **Section 11.** Section 40-4-205, MCA, is amended to read:

10 "40-4-205. Representation of child -- investigation and
 11 report -- appointment -- duties -- costs. (1) The court may,
 12 on its own motion, the motion of any party, or the motion of
 13 the children's advocate, order the children's advocate to
 14 conduct an investigation and file a written report with the
 15 court concerning whether appointment of an attorney, a
 16 guardian ad litem, or the children's advocate would be in
 17 the best interests of a minor dependent child with respect
 18 to his support, custody, and visitation. The report must be
 19 confidential.

20 (2) The court may, on its own motion, the motion of any
 21 party, or the motion of the children's advocate, appoint an
 22 attorney, a guardian ad litem, or the children's advocate to
 23 represent the interests of a minor dependent child with
 24 respect to his support, custody, and visitation. The county
 25 attorney and the deputy county attorneys, if any, may not be

1 appointed for this purpose. The court shall enter an order
 2 for costs and fees in favor of the child's attorney, the
 3 guardian ad litem, or the children's advocate. The order
 4 ~~shall~~ must be made against either or both parents, except
 5 that if the responsible party is indigent, the costs ~~shall~~
 6 be are waived.

7 (3) If the court appoints an attorney, a guardian ad
 8 litem, or the children's advocate, that person has the
 9 duties and authority set forth in [section 8]."

10 NEW SECTION. Section 12. Codification instruction.
 11 [Sections 1 through 10] are intended to be codified as an
 12 integral part of Title 41, and the provisions of Title 41
 13 apply to [sections 1 through 10].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0129, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

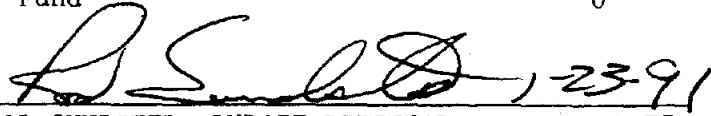
An act creating the Office of the Children's Advocate; defining the powers and duties of the Children's Advocate; authorizing the Children's Advocate to investigate the need for legal representation of a child and to represent a child in proceedings involving adoption, child support, divorce, visitation, review of foster care status, the interstate compact on juveniles, and voluntary admission to a mental health facility.

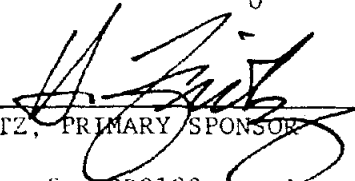
ASSUMPTIONS:

1. The Children's Advocate shall be located in the Governor's Office and subject to appointment by the Governor. The salary level will be set by the Governor and is estimated to be the equivalent of Grade 18, Step 2.
2. One assistant children's advocate will be appointed at a salary level of Grade 15, Step 2. A legal secretary will also be employed at Grade 9, Step 2.
3. Employee benefits are at a rate of 22%.
4. The duties called for in the bill will not supplant existing legal services for children such as the volunteer network of guardians ad litem and court-appointed public defenders.
5. The Office of the Children's Advocate will primarily provide coordination and training for services to be provided under this bill rather than extensive legal representation to children.
6. Court-ordered fees and funds other than general fund will be negligible and will not impact budgeted expenditures and funding.
7. Actual legal caseload for the office will be in the range of 50-250 cases per year, with cases in all counties in the state.
8. Minimal additional costs will be incurred by the Department of Family Services in connection with the work of this office.

FISCAL IMPACT:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
FTE	0.00	3.00	3.00	0.00	3.00	3.00
Personal Services	0	92,400	92,400	0	97,300	97,300
Operating Costs	0	33,500	33,500	0	33,500	33,500
Equipment	0	13,000	13,000	0	0	0
Total	0	138,900	138,900	0	130,800	130,800
<u>Funding:</u>						
General Fund	0	138,900	138,900	0	130,800	130,800


 ROD SUNDSTED, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 1/24/91
 HARRY FRITZ, PRIMARY SPONSOR DATE
 Fiscal Note for SB0129, as introduced **SB 129**