

1 House BILL NO. 778  
 2 INTRODUCED BY Dalmer Keeler Hayes Brand  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A  
 5 JUDICIAL MEANS FOR THE DISSOLUTION OF THE PARENT-CHILD  
 6 RELATIONSHIP AND TO SECURE FOR THE CHILD THE LEAST  
 7 DETRIMENTAL AVAILABLE ALTERNATIVE."

8  
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Purpose. The purpose of this act is to  
 11 provide a judicial means for the voluntary and involuntary  
 12 dissolution of the parent-child relationship or severance of  
 13 parental control over a child and, thereafter, to secure for  
 14 the child the least detrimental available alternative.

15 Section 2. Policy. It is the policy of the state of  
 16 Montana that the relationship between parent and child be  
 17 strengthened and supported and not lightly interfered with  
 18 by the state but that, where a breakdown in the family has  
 19 occurred, the well-being of the children may require  
 20 judicial intervention.

21 Section 3. Construction. The provisions of this act  
 22 shall be liberally construed to promote the purpose and  
 23 policy of the act.

24 Section 4. Definitions. As used in this act, the  
 25 following definitions apply:

1 (1) "Child" means a son or daughter, whether by birth  
 2 or by adoption, under the age of 18 years.

3 (2) "Parent" means the mother or father, either  
 4 biological or adoptive, of a child. Except where the context  
 5 clearly indicates otherwise, "parent" refers to the parent  
 6 or parents whose relationship with the child is sought to be  
 7 affected by a petition filed pursuant to this act.

8 (3) "Parent-child relationship" means all rights,  
 9 privileges, duties, and obligations existing between parent  
 10 and child, including but not limited to the right of the  
 11 parent to relinquish the child for adoption and to notice of  
 12 and the right to withhold consent for the child's adoption.

13 (4) "The reasonable future" means a period of time,  
 14 which may vary according to the child's age, sense of time,  
 15 and the child's emotional needs and attachments, during  
 16 which a parent may adjust his circumstances, conduct, or  
 17 condition so as to provide minimally adequate care for the  
 18 child in the parental home and past which the maintenance of  
 19 the parent-child relationship will present a substantial  
 20 risk of serious detriment to the child. The use of the  
 21 phrase reasonable future in any section of this act does not  
 22 exclude the possibility that, under the particular facts of  
 23 the case, no "future" would be "reasonable" for the child.

24 (5) "Child's sense of time" means the effect of the  
 25 passage of time from the child's perspective, taking into

HB 778

1 consideration the child's diminished capacity, which may  
2 vary with the child's age, to anticipate the future or to  
3 delay the making of an emotional commitment to a parent  
4 figure.

5 (6) "The least detrimental available alternative"  
6 means the available alternative which maximizes the child's  
7 opportunity for maintaining on a stable, continuous,  
8 unconditional, and permanent basis a relationship with an  
9 adult parent figure from whom the child receives care,  
10 affection, and nurturance.

11 (7) "Petition" means a petition to conditionally or  
12 unconditionally dissolve the parent-child relationship or  
13 sever parental control.

14 (8) "Serious detriment to the child" means severe or  
15 chronic injury to the child's emotional or intellectual  
16 functioning, such as would constitute an observable and  
17 substantial impairment of the child's development or  
18 behavior, or severe or chronic injury to the child's body.

19 (9) "Guardian of the person" means a person, other  
20 than the parent of a child or an agency appointed by a court  
21 having jurisdiction over the child, to promote the general  
22 welfare of the child, with the duty and authority to make  
23 decisions permanently affecting the child's health and  
24 development.

25 (10) "Guardian ad litem" means an attorney appointed in

1 accordance with state law, by a court having jurisdiction,  
2 to represent the child, his minor or incompetent parent, or  
3 the putative father of the child in a judicial proceeding  
4 brought to terminate the parent and child relationship.

5 (11) "Legal custodian" means a person, other than a  
6 parent or legal guardian, or an agency to whom legal custody  
7 of the child has been given by a court having jurisdiction  
8 over the child.

9 (12) "Legal custody" means the status of any person or  
10 agency, created by the order of a court of competent  
11 jurisdiction, whereby the person or agency assumes the  
12 day-to-day authority and duty of a parent towards the child,  
13 including but not limited to the authority to maintain or  
14 transfer to another the child's physical custody, to consent  
15 to the provision of emergency medical or surgical care for  
16 the child, and to consent to the child's marriage or  
17 induction into the armed services; and the duty to provide  
18 for the child food, clothing, shelter, education as provided  
19 by law, and routine medical care. Legal custody vested in a  
20 person or agency following the entry of a decree  
21 conditionally or unconditionally dissolving the parent-child  
22 relationship or an order severing parental control shall  
23 include such other rights and duties as the court may  
24 specify.

25 Section 5. Jurisdiction — venue. (1) The district

1 court has jurisdiction of an action brought under this act.

2 (2) An action brought under this act may be heard:

3 (a) in the county in which the child resides;

4 (b) in the county in which the child is present at the  
5 time the action is commenced;

6 (c) in any county upon a showing that it is the most  
7 appropriate forum; or

8 (d) in any county to which the proceedings have been  
9 transferred by the district court.

10 Section 6. Grounds for dissolution of parent-child  
11 relationship or severance of parental control. The district  
12 court may, upon petition, enter an order or decree  
13 authorized by subsections (1), (2), (3) of [section 20] upon  
14 finding that the order or decree is the least detrimental  
15 available alternative for the child and that one or more of  
16 the following conditions exist:

17 (1) The parent has consented in writing to the entry  
18 of the order or decree and, having been advised of the  
19 effect of his act, has acknowledged and affirmed his written  
20 consent before the court.

21 (2) The parent has abandoned the child by evidencing,  
22 either by statement or conduct, a settled intent to forego  
23 for the reasonable future all parental rights or all  
24 parental responsibilities and has not, for a period of 6  
25 months prior to the filing of the petition, assumed

1 responsibility for the care and custody of the child or  
2 participated in a plan to assume such responsibility. It  
3 shall be disputably presumed that a parent has abandoned his  
4 child if the child is found under circumstances where the  
5 identity of the parent is unknown and cannot be ascertained,  
6 despite diligent searching, and the parent has not come  
7 forward to claim the child for a period of 3 months.

8 (3) Placing the child in the custody of the parent at  
9 any time within the reasonable future would raise a  
10 substantial risk of serious detriment to the child. In  
11 determining such risk, the court may consider but is not  
12 limited to the following:

13 (a) emotional or mental illness or mental deficiency  
14 of the parent of such duration or nature as to render the  
15 parent unlikely to care for the ongoing physical, mental,  
16 and emotional needs of the child;

17 (b) physical, psychological, or sexual abuse of any  
18 child by the parent. It shall be disputably presumed that  
19 the parent is responsible for the abuse of any child in his  
20 custody, and it shall constitute abuse for the purposes of  
21 this subsection that a parent, who knew or should have known  
22 that his child was being abused, did not take reasonable  
23 action to protect the child.

24 (c) excessive use by the parent of intoxicating liquor  
25 or narcotic or dangerous drugs;

1 (d) neglect of any child by the parent which may  
2 include but is not limited to failure to provide for the  
3 child's basic medical and nutritional needs;

4 (e) the routinely maintained unsafe or unsanitary  
5 condition of the parental home;

6 (f) the conviction of the parent for the homicide of  
7 the other parent.

8 (4) Whenever the physical custody of the child is  
9 lodged with others, the parent has failed for a period of 6  
10 months to adjust his circumstances, conduct, or condition so  
11 as to provide minimally adequate care for the child in the  
12 parental home, and the parent is unlikely to do so within  
13 the reasonable future. Minimally adequate care is that care  
14 the absence of which raises a substantial risk of serious  
15 detriment to the child.

16 (5) The parent has failed or neglected without  
17 reasonable and lawful cause to provide for the basic  
18 physical and psychological needs of the child for a period  
19 of 6 months. In determining such failure or neglect, the  
20 court shall consider but is not limited to one or more of  
21 the following:

22 (a) failure by the parent, although able, to assume  
23 care and custody of the child in the parental home;

24 (b) failure by the parent to pay a reasonable portion  
25 of substitute physical care and maintenance, based on

1 ability to pay, if physical custody is lodged with others;

2 (c) failure by the parent to maintain regular  
3 visitation or other contact with the child as part of a plan  
4 reasonably calculated to reunite the child with the parent;

5 (d) failure by the parent to maintain regular contact  
6 or communication with the physical or legal custodian of the  
7 child.

8 (6) In determining failure or neglect under (5), the  
9 court may disregard incidental care and custody, visitation,  
10 communications, or contributions.

11 (7) The parent is incarcerated in a penal institution  
12 upon conviction for a criminal offense and is serving a  
13 sentence of not less than 3 years, of which not less than 2  
14 years remain to be served within the institution at the time  
15 the petition is filed, and the parent is unlikely to be  
16 released within the reasonable future.

17 (8) When the physical custody of the child is lodged  
18 with the other parent and the parents are living separately,  
19 the parent's conduct or condition falls under subsections  
20 (2), (3), or (7), or the parent has acknowledged his consent  
21 in accordance with subsection (1) or the parent has failed  
22 or neglected without reasonable and lawful cause for a  
23 period of 6 months to do one or more of the following:

24 (a) pay a reasonable portion of the child's support  
25 and maintenance, based on ability to pay. It shall be

1 disputably presumed that an order of support by a court of  
2 competent jurisdiction is reasonable.

3 (b) maintain regular visitation or other contact with  
4 the child.

5 Section 7. Foster care. When a child has been placed  
6 in foster care as provided for by law or has been otherwise  
7 placed by parents or others into the physical custody of  
8 such family, the district court shall in proceedings  
9 concerning the dissolution of parent-child relationship or  
10 severance of parental control consider whether the child has  
11 become integrated into the foster family to the extent that  
12 his familial identity is with that family and the family or  
13 person is able and willing to permanently so integrate the  
14 child. In such considerations the district court shall note  
15 but is not limited to the following:

16 (1) the love, affection, and other emotional ties  
17 existing between the child and the parents and his ties with  
18 the integrating family;

19 (2) the capacity and disposition of the parents from  
20 whom he was removed as compared with that of the integrating  
21 family to give the child love, affection, and guidance and  
22 continuing the education of the child;

23 (3) the capacity and disposition of the parents from  
24 whom the child was removed and the integrating family to  
25 provide the child with food, clothing, medical care, and

1 other physical, mental, and emotional needs;

2 (4) the length of time the child has lived in a  
3 stable, satisfactory environment and the desirability of  
4 maintaining such continuity;

5 (5) the permanence as a family unit of the integrating  
6 family or person;

7 (6) the moral fitness and physical and mental health  
8 of the parents from whom the child was removed and that of  
9 the integrating family or person;

10 (7) the home, school, and community record of the  
11 child, both when with the parents from whom he was removed  
12 and when with the integrating family; or

13 (8) the reasonable preference of the child.

14 Section 8. Rights of the child to prevail. When one or  
15 more of the grounds have been established in accordance with  
16 [section 6], the goal of securing the least detrimental  
17 available alternative for the child shall prevail over any  
18 conflicting rights of the parent, and it shall not be  
19 presumed that any right of the parent is consistent with the  
20 interests of the child.

21 Section 9. Defenses. (1) If is not a defense to a  
22 petition that the maintenance of the parent and child  
23 relationship may serve as an inducement for the parent's  
24 rehabilitation.

25 (2) If prior to the filing of the petition the child

1 has been found to be within the jurisdiction of the district  
 2 court and has been committed by the court to the legal  
 3 custody of the department of social and rehabilitation  
 4 services or other licensed child-caring agency, the agency  
 5 shall provide or offer to the parent social services which  
 6 are available in the community and are reasonably designed  
 7 to facilitate the return of the child to the parent. It is a  
 8 defense to a petition that such services were not provided  
 9 or offered if the parent has been available and has made  
 10 reasonable efforts to maintain a continuing relationship  
 11 with the child and to adjust his circumstances, conduct, or  
 12 condition so as to provide for the child's return and if,  
 13 at the time the defense is raised, it is probable that the  
 14 provision of such services would be successful in effecting  
 15 the return of the child within the reasonable future.

16 (3) In determining whether a child will receive  
 17 minimally adequate care or be exposed to a substantial risk  
 18 of serious detriment in the parental home, the court shall  
 19 consider the continuing availability of reasonable social  
 20 services.

21 (4) The practice of a parent who chooses for himself  
 22 or his child treatment by prayer or spiritual means alone  
 23 shall not be construed as lack of minimally adequate care of  
 24 the child or as conduct raising substantial risk of serious  
 25 detriment to the child.

1 Section 10. Considerations for determining the least  
 2 detrimental available alternative. In determining the least  
 3 detrimental available alternative for the child, the court  
 4 shall consider but is not limited to one or more of the  
 5 following:

- 6 (1) the child's sense of time;
- 7 (2) the need of the child for stability, continuity,  
 8 and security;
- 9 (3) the child's identification with and attachment to  
 10 the parent;
- 11 (4) the child's identification with and attachment to  
 12 any individual who has assumed a parental role toward the  
 13 child.

14 Section 11. Parties to proceedings. The child, the  
 15 parent, the state, and the petitioner shall be parties to  
 16 all proceedings under this act. Other persons served with  
 17 summons in accordance with [section 14(1)] may be present  
 18 and participate in the proceedings as the court in its  
 19 discretion may allow.

20 Section 12. Form and contents of petition. Proceedings  
 21 under this act shall be commenced by the filing of a  
 22 petition, which is entitled "In the matter of (child's  
 23 name), a person under the age of 18 years". The petition  
 24 must set forth specifically:

- 25 (1) the name and address of the petitioner;

1 (2) the filing status of the petitioner as enumerated  
2 in [section 13];

3 (3) the name, sex, date, and place of birth of the  
4 child;

5 (4) the name and address of the parent whose  
6 relationship with the child is sought to be dissolved or  
7 whose control over the child is sought to be served;

8 (5) the name and address of the child's other parent;

9 (6) when the child's parent is under the age of 18  
10 year, the names and addresses of the parents or guardian of  
11 the child's parent;

12 (7) the names and addresses of the person or agency  
13 having legal custody or guardianship of the person or acting  
14 in loco parentis to the child;

15 (8) whether the child is within the jurisdiction of  
16 the district court of this state or of another state and, if  
17 so, the name of the court, the state, and the county and  
18 the date that the finding of jurisdiction was entered;

19 (9) the facts upon which relief is sought;

20 (10) the relief sought, which may be stated in the  
21 alternative.

22 Section 13. Persons eligible to petition. (1) A  
23 petition based on personal knowledge may be filed by any  
24 person.

25 (2) A petition based on information and belief may be

1 filed by the following persons:

2 (a) the guardian or guardian ad litem of the child  
3 appointed by a court of competent jurisdiction;

4 (b) an authorized employee of the department of social  
5 and rehabilitation services;

6 (c) an authorized employee of any public or private  
7 child-caring agency in whom the child's legal custody is  
8 vested;

9 (d) a county attorney or the attorney general.

10 (3) A petition based on information and belief,  
11 accompanied by one or more signed affidavits supporting the  
12 allegations of the petition and based upon personal  
13 knowledge, may be filed by the following persons:

14 (a) a person with lawful physical custody of the  
15 child, including a foster parent;

16 (b) a person, other than a public or private  
17 child-caring agency, with legal custody of the child;

18 (c) the spouse of the other parent if that parent has  
19 lawful physical custody of the child.

20 Section 14. Service and notice. (1) Within 30 days  
21 after the petition is filed, the district court shall set a  
22 date for a preliminary hearing and cause a copy of the  
23 petition, certified by the petitioner, his agent or  
24 attorney, or the clerk of the court, along with a summons,  
25 to be served upon the following in the manner that service

1 would be made in a civil case:

2 (a) both parents of the child except when the identity  
3 of either parent is not known with certainty by the  
4 petitioner or is contested, in which case notice shall be  
5 served on any person known by the petitioner to have claimed  
6 or asserted parental rights within the preceding 12 months;

7 (b) the parents or guardian of the person of a parent  
8 under age 18 years or the guardian of the person of a parent  
9 who has been found mentally incompetent;

10 (c) the guardian of the person or of the estate and  
11 the guardian ad litem, if any, of the child;

12 (d) the county attorney for the county in which the  
13 petition is filed;

14 (e) the person or agency having legal custody of the  
15 child;

16 (f) if the child has reached the age of 13 years, upon  
17 the child; and

18 (g) upon any person found by the court to have a  
19 legitimate interest in the outcome of the proceedings and if  
20 the interests of justice so require.

21 (2) Service upon any person entitled to notice shall  
22 be made within not less than 10 days prior to the  
23 preliminary hearing for persons found within the state and  
24 not less than 20 days prior to the preliminary hearing for  
25 persons found outside of the state.

1 (3) When the whereabouts of any party cannot be  
2 reasonably ascertained, service by publication shall be made  
3 pursuant to Montana rules of civil procedure.

4 (4) Service upon the department of social and  
5 rehabilitation services may be made by certified mail  
6 addressed to the director of the department.

7 (5) The summons shall advise the person being served  
8 of the following:

9 (a) the date and place of the preliminary hearing;

10 (b) that a proceeding has been commenced which may  
11 result in a decree dissolving, severing, and extinguishing  
12 all rights, privileges, duties, and obligations existing  
13 between the parent and the child, including the right of the  
14 parent to notice of or to withhold consent for the adoption  
15 of the child;

16 (c) that the parent is entitled to be represented by  
17 counsel of his choice and, if he is financially unable to  
18 retain counsel, that the court will appoint counsel for him;

19 (d) that a guardian ad litem will be appointed by the  
20 court to represent the child;

21 (e) that failure of a parent to appear at the place  
22 and on the date set for preliminary hearing may result in  
23 the entry of a decree of dissolution by default.

24 (6) If the petitioner has reason to believe that a  
25 person entitled to notice under subsection (1) of this



1 section is unable to read or understand the English  
 2 language, there shall conspicuously appear or be attached to  
 3 the face of the summons notice in the person's own language  
 4 substantially as follows:

5 If you do not read English, you should immediately  
 6 contact for assistance an attorney or other English speaking  
 7 person or the clerk of the ..... court of .....  
 8 County [address and telephone number of the clerk]. A  
 9 proceeding is pending against [name of parent] seeking to  
 10 forever end his or her rights as a parent of [name of  
 11 child].

12 (7) If the petitioner has reason to believe or if it  
 13 is otherwise called to the court's attention that a person  
 14 entitled to notice under subsection (1) of this section is  
 15 unable to read any language, the court may, if practical, on  
 16 its own motion or upon the motion of any party order that  
 17 service be accompanied by an oral explanation, in the  
 18 person's own language, of the contents of the summons and of  
 19 the petition.

20 Section 15. Preliminary hearing — right to  
 21 representation. The preliminary hearing shall be conducted  
 22 in the following manner:

23 (1) The court shall inform the parent:

24 (a) of the facts alleged in the petition;

25 (b) of the possible consequences of the proceedings;

1 (c) of the right to be present and subpoena witnesses;

2 (d) of the right to be represented by counsel of his  
 3 choice and, if he is financially unable to retain counsel,  
 4 that the court will appoint counsel for him.

5 (2) If no guardian ad litem has been previously  
 6 appointed, the court shall appoint an attorney, who may not  
 7 be an attorney for any other party or for any person or  
 8 agency interested in the outcome of the proceedings, to  
 9 represent the child as guardian ad litem. In selecting the  
 10 guardian ad litem of a child of the age of 13 years or  
 11 older, the court shall give due consideration to the  
 12 appointment of an attorney, if any, chosen by the child.

13 (3) Upon a finding that the parent is financially  
 14 unable to obtain counsel and has not knowingly waived the  
 15 right to representation, the court shall appoint an attorney  
 16 to represent the parent.

17 (4) If, despite diligent search, the identity of the  
 18 parent is unknown to the petitioner, the court may:

19 (a) compel the appearance of any party before the  
 20 court and inquire of them the identity of the parent, but  
 21 the court may not compel disclosure of the identity of the  
 22 parent from the other parent;

23 (b) if the court finds that the publication of notice  
 24 of the proceedings as provided for in the Montana rules of  
 25 civil procedure or other public notice would be reasonably

1 anticipated to lead to the identification of the parent and  
2 that such notice has not already been made, the court shall  
3 order that such notice be made. In no event may notice  
4 contain the name of the other parent without his consent.

5 (c) appoint a person to conduct an additional search  
6 for the parent.

7 (5) If the court finds that the parent is, due to a  
8 lack of maturity or a mental condition, unable to comprehend  
9 the nature of the proceedings, the court shall appoint a  
10 guardian ad litem, who shall be an attorney, to represent  
11 the parent.

12 (6) The court shall inquire of the parties present  
13 whether service has been made pursuant to [section 14] and  
14 upon a showing that the identity of any person entitled to  
15 notice is unknown and cannot be reasonably ascertained,  
16 waive service of notice upon them; the court may continue  
17 the preliminary hearing to provide additional time for the  
18 service of notice.

19 (7) The court may enter any other appropriate order.

20 Section 16. State to be represented. The state shall  
21 appear in all proceedings pursuant to this act and shall be  
22 represented by either the county attorney of the county in  
23 which the proceedings are being heard or by the attorney  
24 general. If the child has been committed to the legal  
25 custody of the department of social and rehabilitation

1 services, the state may appear by an attorney representing  
2 the department.

3 Section 17. Role of the guardian ad litem. (1) The  
4 guardian ad litem for a child who has not yet reached the  
5 age of 13 shall make an independent investigation of the  
6 alternative dispositions available to the court and shall  
7 advocate the alternative least detrimental to the child. He  
8 shall also relate to the court the expressed desires, if  
9 any, of the child.

10 (2) The guardian ad litem of a child of the age of 13  
11 years or older shall ascertain the desires of the child and  
12 advocate that position before the court.

13 (3) The guardian ad litem may file motions, offer  
14 testimony of witnesses and other evidence probative of any  
15 material issue, and cross-examine witnesses offered by any  
16 other party.

17 Section 18. Physical or psychological evaluation of  
18 parent or child. (1) At any time after a petition has been  
19 filed and upon a finding that reasonable cause exists, the  
20 court may order the child or the parent to be examined by a  
21 psychiatrist, a physician, a licensed clinical psychologist,  
22 or other expert appointed by the court for the purpose of  
23 evaluating the child's or the parent's physical,  
24 psychological, mental, or emotional condition. The expense  
25 of the evaluation shall be borne by the county.

1 (2) Upon motion of any party and upon a showing that  
 2 the party is without adequate funds, the court may appoint a  
 3 psychiatrist, a physician, a licensed clinical psychologist,  
 4 or other expert chosen by the moving party to make an  
 5 independent evaluation of the party's physical,  
 6 psychological, mental, or developmental condition,  
 7 notwithstanding that an evaluation has been made or ordered  
 8 pursuant to subsection (1) of this section. The expense of  
 9 the examination shall be borne by the county.

10 (3) The report of an evaluation obtained pursuant to  
 11 subsection (1) of this section shall be provided to the  
 12 guardian ad litem and the attorneys for all other parties.  
 13 The court may, by appropriate order, forbid the guardian ad  
 14 litem or the other attorneys from divulging to any party or  
 15 other person any information of a sensitive nature contained  
 16 in such report.

17 Section 19. Procedure — court of the hearing —  
 18 evidence. (1) Proceedings under this act shall be heard by  
 19 the court without a jury. However, upon the request of any  
 20 party, the court may in its discretion empanel a jury which  
 21 may be advisory only and shall be conducted in an informal  
 22 manner. The proceedings shall be recorded.

23 (2) The general public shall be excluded from any  
 24 proceedings pursuant to this act, and only those persons who  
 25 are entitled to notice pursuant to [section 14] and their

1 attorneys or whom the court finds to have a legitimate  
 2 interest in the proceedings or the work of the court may be  
 3 admitted. Persons so admitted may not disclose any  
 4 information obtained at the hearing which would identify an  
 5 individual child or parent.

6 (3) The court may, on its own motion or that of any  
 7 party, require the presence of witnesses considered  
 8 necessary to the adjudication of the petition or the  
 9 disposition of the child and may by appropriate order direct  
 10 the commissioners of the county in which the court is  
 11 sitting to provide for the reasonable expenses of an  
 12 out-of-state witness. The hearing may be continued from time  
 13 to time for the hearing of additional evidence.

14 (4) The rules of evidence applicable to a trial of a  
 15 civil case shall apply except as specifically modified by  
 16 this act.

17 (5) For the purposes of adjudication, the court may  
 18 consider any reports or other documents maintained in the  
 19 regular and ordinary course by the department of social and  
 20 rehabilitation services if it appears that the author of any  
 21 such report or document, if available, would be competent to  
 22 testify as to its contents and that person is not available.

23 (6) For the purpose of disposition, testimony,  
 24 reports, or other material relating to the child's mental,  
 25 physical, and social history and prognosis may be received

1 by the court without regard to their competency under the  
2 rules of evidence.

3 (7) The court may, on its own motion or that of any  
4 party, hear the testimony of or interview the child. Such  
5 testimony or interview may be heard in the court's chambers  
6 in the presence of the court, the attorneys, and the  
7 reporter only or as the parties may otherwise stipulate.

8 (8) If the identity of any parent is not known with  
9 certainty by the petitioner or is contested, it shall be the  
10 burden of the assertive parent to establish his rights.

11 (9) The court may, on its own motion or that of any  
12 party, at any time prior to the entry of an order or decree  
13 adjudicating the petition, direct that the petition may be  
14 amended. If the amendment results in a substantial departure  
15 from the facts originally alleged, the court shall grant  
16 such continuance as the interests of justice may require.

17 Section 20. Orders — decrees — disposition. (1) Each  
18 order entered pursuant to this section shall be in writing  
19 and recite the findings of fact upon which it is based.

20 (2) Upon a finding that one or more of the grounds set  
21 forth in [section 6] have been established by clear and  
22 convincing evidence that no rights of the other parent  
23 remain outstanding and that it is the least detrimental  
24 available alternative for the child, the court shall either:

25 (a) enter an order severing parental control over the

1 child, awarding his legal custody and guardianship of his  
2 person to an appropriate person or public or private  
3 child-caring agency and regulate, in the manner least  
4 detrimental to the child, the relationship between the child  
5 and the parent;

6 (b) enter an unconditional decree dissolving the  
7 parent-child relationship and awarding the child's legal  
8 custody and guardianship of his person to an appropriate  
9 individual or public or private child-caring agency with  
10 authority to consent to the child's adoption;

11 (c) enter a conditional decree dissolving the  
12 parent-child relationship when it appears to the court that  
13 the least detrimental alternative is the adoption of the  
14 child but the court is unable to determine whether an  
15 adoptive placement is available. An order entered pursuant  
16 to this subsection shall award the child's legal custody and  
17 guardianship of his person to an appropriate individual or  
18 public or private child-caring agency with the authority to  
19 locate and place the child in an adoptive home. Such decree  
20 shall become unconditional upon a finding by the court that  
21 the child has been placed in a home for the purposes of  
22 adoption. Upon a finding by the court that, despite diligent  
23 effort, no adoptive home can be found for the child, the  
24 court may enter any other order provided for in this  
25 section.

1 (d) No order may be entered pursuant to subsection (b)  
2 or (c) if the child is of the age of 13 years or over and  
3 objects to the order.

4 (3) Upon finding that one or more of the grounds set  
5 forth in [section 6] have been established by clear and  
6 convincing evidence and that the rights of the other parent  
7 remain outstanding, the court may enter any order authorized  
8 by subsection (2) which is not inconsistent with such  
9 outstanding rights and may enter a conditional decree  
10 dissolving the parent-child relationship pending  
11 consideration of the child's relationship with the other  
12 parent.

13 (4) Any order entered pursuant to subsection (2) or  
14 (3) may be accompanied by an order appointing a guardian of  
15 the child's estate.

16 (5) Any order entered pursuant to subsection (2) or  
17 (3) may, if so specified by the court, constitute a finding  
18 that the child is within the jurisdiction of the district  
19 court or continue any such findings previously made, and the  
20 court may make any order for the child's care, custody, and  
21 welfare authorized by the court, except that no parent whose  
22 relationship with the child has been unconditionally  
23 dissolved is subject to the further jurisdiction of the  
24 court. The department of social and rehabilitation services  
25 may be ordered to provide for the child's support to the

1 same extent that it provides support for a child in a foster  
2 home, notwithstanding that the child's custody and  
3 guardianship of his person is awarded to another person if  
4 such person is also physical custodian of the child.

5 (6) Any order entered pursuant to subsection (2) or  
6 (3) awarding the child's legal custody to any person or  
7 agency shall be reviewed by the court within 90 days of the  
8 date of its entry, and thereafter as the court may direct,  
9 for the purpose of apprising the court of efforts being made  
10 by such person or agency to obtain the least detrimental  
11 available alternative for the child. Upon a showing of good  
12 cause, any such order may be vacated and the child's custody  
13 and guardianship of his person may be awarded to another  
14 person or agency.

15 (7) Upon a finding that one or more of the grounds set  
16 forth in [section 6] have not been established by clear and  
17 convincing evidence or that it is the least detrimental  
18 available alternative for the child, the court shall enter  
19 an order denying the petition.

20 (8) Upon a finding that social services are available  
21 in the community reasonably designed to effectuate the  
22 return of the child to the parental home or the safe  
23 maintenance of the child in the parental home, the court may  
24 order the department of social and rehabilitation services  
25 to facilitate access to such services, make them available,

1 or assume their cost.

2 Section 21. Effect of orders and decrees. (1) An  
3 unconditional decree dissolving the parent-child  
4 relationship irrevocably severs and extinguishes the  
5 parent-child relationship in all respects except as set out  
6 in this section and may be reviewed only on direct appeal.

7 (2) An unconditional decree dissolving the  
8 parent-child relationship does not serve to either  
9 disinherit a parent or a child named as a testamentary  
10 beneficiary of a preexisting instrument or divest the right  
11 of the parent or the child to succeed by intestacy to or  
12 through the estate of the other except as occurs by a  
13 subsequent adoption of the child.

14 (3) A conditional decree dissolving the parent-child  
15 relationship acts as an order severing parental control  
16 until such time as it may become unconditional.

17 (4) An order severing parental control indefinitely  
18 suspends any right of the parent which the court has found  
19 to be or shall subsequently find to be inconsistent with the  
20 least detrimental alternative available to the child,  
21 including, unless the court specifies otherwise, the right  
22 to the legal and physical custody of the child. Following  
23 the entry of an order severing parental control, the parent  
24 has no authority to release the child for adoption to any  
25 person or agency. Such an order does not affect the duty of

1 the parent to support the child.

2 (5) An order severing parental control or a  
3 conditional decree dissolving the parent-child relationship  
4 has no effect on the inheritance rights of the parent or the  
5 child.

6 (6) No order or decree entered disentitles a child to  
7 any benefit due him from any third person, including but not  
8 limited to any Indian tribe or agency of a state or of the  
9 United States.

10 Section 22. Appeals. (1) Any order or decree entered  
11 pursuant to [section 20] is a final order and may be  
12 appealed by any party whose rights or interests it adversely  
13 affects.

14 (2) The child shall be represented on any appeal by a  
15 guardian ad litem and, upon a finding that the parent is  
16 financially unable to obtain counsel on appeal, the court  
17 shall appoint counsel to represent the parent. The state  
18 shall appear as provided for in [section 16].

19 (3) The appeal may raise any issue of law or fact  
20 presented to the lower court and shall be expedited as an  
21 appeal in a criminal case.

22 (4) Unless the order or decree entered pursuant to  
23 this act so specifies, the pendency of an appeal therefrom  
24 does not suspend its effect except that no proceedings for  
25 the adoption of a child may be heard pending the appeal.

1 an unconditional decree dissolving the parent-child  
2 relationship.

3 Section 23. Finality of orders and decrees. (1) The  
4 court may at any time modify or set aside any order, other  
5 than an order unconditionally dissolving the parent-child  
6 relationship, upon a finding that such order is no longer  
7 the least detrimental available alternative for the child.

8 (2) The pendency of an appeal shall not preclude the  
9 court from entering such further temporary orders relating  
10 to the child's legal or physical custody or guardianship of  
11 his person or estate as it finds necessary pending final  
12 disposition of the appeal but may only pertain to matters  
13 transpiring since the order on appeal was issued.

14 Section 24. Severability. If a part of this act is  
15 invalid, all valid parts that are severable from the invalid  
16 part remain in effect. If a part of this act is invalid in  
17 one or more of its applications, the part remains in effect  
18 in all valid applications that are severable from the  
19 invalid applications.

-End-

## STATE OF MONTANA

REQUEST NO. 499-77

## FISCAL NOTE

Form BD 15

In compliance with a written request received February 14, 19 77, there is hereby submitted a Fiscal Note for House Bill 778 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

## DESCRIPTION OF PROPOSED LEGISLATION:

Provides for Judicial means of dissolving the parent-child relationship.

## ASSUMPTIONS:

1. Each child case requires 6 hours of legal service .
2. 80% of SRS and Department of Institutions' cases will be appealed during the biennium.
3. 50% of SRS and Department of Institutions' cases will require that legal services be provided the parents.
4. An additional 9.00 FTE social workers will be required since, under the proposed legislation, the projected cases for private agencies, institutions, and private cases would be serviced by SRS.

## FISCAL IMPACT:

	<u>FY78</u>	<u>FY79</u>
Personal Services	\$110,886	\$113,519
Legal Fees: Child	264,250	264,250
Appeal Costs: Child	1,126,500	1,126,500
Hearing Costs: Parent	117,250	117,250
Appeal Costs: Parents	562,500	562,500
	<u>\$2,181,386</u>	<u>\$2,184,019</u>

## Summary of funding for the above increased costs:

State General Fund	\$1,861,693	\$1,863,010
Counties	319,693	321,009
	<u>\$2,181,386</u>	<u>\$2,184,019</u>

## TECHNICAL NOTE:

1. Sections 6 & 7 are in conflict with Section 10-1301 RCM 1947 and Section 61-205 RCM 1947.
2. Section 19, subparagraph 8 is in conflict with Section 61-305 RCM 1947.
3. Section 20 subparagraph 2(a) refers to "child caring" agencies and conflicts with SRS's licensing of adoption agencies.

*Richard L. Sawyer*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-18-77