

HOUSE BILL NO. 67

INTRODUCED BY COCCHIARELLA
BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

IN THE HOUSE

DECEMBER 23, 1992	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 4, 1993	FIRST READING.
JANUARY 11, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 13, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
JANUARY 14, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 98; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 16, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 5, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 6, 1993	SECOND READING, CONCURRED IN.
MARCH 8, 1993	THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 31, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 2, 1993	THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 67

INTRODUCED BY COCCHIARELLA

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE APPOINTMENT OF CERTAIN PUBLIC EMPLOYEES TO REPRESENT CHILDREN IN CERTAIN JUDICIAL PROCEEDINGS; PROHIBITING A COURT FROM ORDERING THE DEPARTMENT OF FAMILY SERVICES TO CONDUCT A CHILD CUSTODY INVESTIGATION; AMENDING SECTIONS 40-4-205, 40-4-215, 40-6-110, AND 41-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 40-4-205, MCA, is amended to read:

"40-4-205. Representation of child. The court may appoint an attorney to represent the interests of a minor dependent child with respect to his the child's support, custody, and visitation. The county attorney, and the a deputy county attorneys attorney, if any, or the department of family services or any of its staff may not be appointed for this purpose. The court shall enter an order for costs and fees in favor of the child's attorney. The order shall must be made against either or both parents, except that if the responsible party is indigent, the costs shall must be waived."

Section 2. Section 40-4-215, MCA, is amended to read:

"40-4-215. Investigations and reports. (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. if--the--court--orders--the department--of--family--services--to--conduct--the--investigation, the--department--may--charge--a--reasonable--fee;--The--department shall--waive--the--fee--for--conducting--the--investigation--if--the parent--or--the--child's--custodian--requesting--the--investigation is--a--recipient--of--aid--to--families--with--dependent--children, food--stamps,--or--general--relief--benefits. The department of family services may not be ordered to conduct the investigation or draft a report but may be ordered to consult with the investigator and share information relevant to the child's best interests. The cost of the investigation and report shall must be paid according to the final order.

(2) In preparing his a report concerning a child, the investigator may consult any person who may have information about the child and his the child's potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent

1 of the parent or the child's custodian; but the child's
2 consent must be obtained if he the child has reached the age
3 of 16 unless the court finds that he the child lacks mental
4 capacity to consent. If the requirements of subsection (3)
5 are fulfilled, the investigator's report may be received in
6 evidence at the hearing.

7 (3) The court shall mail the investigator's report to
8 counsel and to any party not represented by counsel at least
9 10 days prior to the hearing. The investigator shall make
10 available to counsel and to any party not represented by
11 counsel the investigator's file of underlying data and
12 reports, complete texts of diagnostic reports made to the
13 investigator pursuant to the provisions of subsection (2),
14 and the names and addresses of all persons whom the
15 investigator has consulted. Any party to the proceeding may
16 call the investigator and any person whom--he the
17 investigator has consulted for cross-examination. A party
18 may not waive his the right of cross-examination prior to
19 the hearing."

20 **Section 3.** Section 40-6-110, MCA, is amended to read:

21 "40-6-110. Parties. The child shall must be made a
22 party to the action. ~~if he is a~~ A minor, ~~he shall must~~ be
23 represented by his the minor's general guardian or a
24 guardian ad litem appointed by the court. The child's mother
25 or father may not represent the child as guardian or

1 otherwise. The court may not appoint the department of
2 family services or any of its staff as guardian ad litem for
3 the child. The natural mother, each man presumed to be the
4 father under 40-6-105, and each man alleged to be the
5 natural father ~~shall must~~ be made parties or, if not subject
6 to the jurisdiction of the court, ~~shall must~~ be given notice
7 of the action in a manner prescribed by the court and must
8 be given an opportunity to be heard. The court may align the
9 parties."

10 **Section 4.** Section 41-3-303, MCA, is amended to read:

11 "41-3-303. Guardian ad litem. (1) In every judicial
12 proceeding, the court shall appoint for any child alleged to
13 be abused or neglected a guardian ad litem. The department
14 or any of its staff may not be appointed as the guardian ad
15 litem in a judicial proceeding under this title. When
16 necessary the guardian ad litem may serve at public expense.

17 (2) The guardian ad litem is charged with the
18 representation of the child's interests. The guardian ad
19 litem has the following general duties:

20 (a) to conduct ~~such investigation as he~~ investigations
21 that the guardian ad litem considers necessary to ascertain
22 the facts constituting the alleged abuse or neglect;

23 (b) to interview or observe the child who is the
24 subject of the proceeding;

25 (c) to have access to court, medical, psychological,

1 law enforcement, social services, and school records
2 pertaining to the child, his and the child's siblings, and
3 parents or custodians;

4 (d) to make written reports to the court concerning the
5 child's welfare;

6 (e) to appear and participate in all proceedings to the
7 degree necessary to adequately represent the child and make
8 recommendations to the court concerning the child's welfare;
9 and

10 (f) to perform such other duties as directed by the
11 court."

12 NEW SECTION. **Section 5.** Effective date. [This act] is
13 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0067, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill prohibiting the Department of Family Service (DFS) staff from representing children in certain judicial proceedings and from serving as guardian ad litem, and prohibiting a court from ordering the DFS to conduct a child custody investigation.

ASSUMPTIONS:

1. Department of Family Services (DFS) will no longer charge fees for child custody investigations.
2. DFS will no longer contract for the investigations.
3. Staff workloads are currently above 100%. No savings will be realized in personal services. Overtime pay may be reduced.
4. Child custody investigations are estimated to be 30 cases each year at \$500.00 a case. The cost is estimated to remain constant for both fiscal years 1994 and 1995. (This amount is budgeted in control variable 01001)

FISCAL IMPACT:Expenditures:

	FY 94			FY 95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	0.00	0.00	0.00	0.00	0.00	0.00
Personal Service	0	0	0	0	0	0
Operating Costs	15,000	0	(15,000)	15,000	0	(15,000)
Equipment	0	0	0	0	0	0
Total	15,000	0	(15,000)	15,000	0	(15,000)

Revenues:

State Special (02)	15,000	0	(15,000)	15,000	0	(15,000)
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David M Lewis 1-7-93
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Vicki Cocchiarella 1/8/93
 VICKI COCCHIARELLA, PRIMARY SPONSOR DATE

Fiscal Note for HB0067, as introduced

HB 67

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 67

INTRODUCED BY COCCHIARELLA

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

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Section 1. Section 40-4-205, MCA, is amended to read:

"40-4-205. Representation of child. The court may appoint an attorney to represent the interests of a minor dependent child with respect to his the child's support, custody, and visitation. The county attorney, and the a deputy county attorneys attorney, if any, or the department of family services or any of its staff may not be appointed for this purpose. The court shall enter an order for costs and fees in favor of the child's attorney. The order shall must be made against either or both parents, except that if the responsible party is indigent, the costs shall must be waived."

Section 2. Section 40-4-215, MCA, is amended to read:

"40-4-215. Investigations and reports. (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. If the court orders the department of family services to conduct the investigation, the department may charge a reasonable fee. The department shall waive the fee for conducting the investigation if the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children, food stamps, or general relief benefits. The department of family services may not be ordered to conduct the investigation or draft a report but may be ordered to consult with the investigator and share information relevant to the child's best interests. The cost of the investigation and report shall must be paid according to the final order.

(2) In preparing his a report concerning a child, the investigator may consult any person who may have information about the child and his the child's potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent

of-the-parent-or-the--child's--custodian;--but--the--child's
consent-must-be-obtained-if-he the child has-reached-the-age
of--16-unless-the-court-finds-that-he the child lacks-mental
capacity-to-consent;--if-the-requirements-of--subsection--(3)
are--fulfilled;--the-investigator's-report-may-be-received-in
evidence-at-the-hearing;

{3}--The-court-shall-mail-the-investigator's--report--to
counsel-and-to-any-party-not-represented-by-counsel-at-least
10--days--prior--to-the-hearing;--The-investigator-shall-make
available-to-counsel-and-to-any--party--not--represented--by
counsel--the--investigator's--file--of--underlying--data-and
reports;--complete-texts-of-diagnostic-reports--made--to--the
investigator--pursuant--to-the-provisions-of-subsection--(2);
and--the--names--and--addresses--of--all--persons--whom--the
investigator-has-consulted;--Any-party-to-the-proceeding--may
call---the---investigator---and---any--person--whom--he the
investigator has-consulted-for--cross-examination;--A--party
may--not--waive--his the right-of-cross-examination-prior-to
the-hearing."

Section 2. Section 40-6-110, MCA, is amended to read:

"40-6-110. Parties. The child shall must be made a
party to the action. If-he-is-a A minor;--he-shall must be
represented by his the minor's general guardian or a
guardian ad litem appointed by the court. The child's mother
or father may not represent the child as guardian or

otherwise. The court may not appoint the department of
family services or any of its staff as guardian ad litem for
the child. The natural mother, each man presumed to be the
father under 40-6-105, and each man alleged to be the
natural father shall must be made parties or, if not subject
to the jurisdiction of the court, shall must be given notice
of the action in a manner prescribed by the court and must
be given an opportunity to be heard. The court may align the
parties."

Section 3. Section 41-3-303, MCA, is amended to read:

"41-3-303. Guardian ad litem. (1) In every judicial
proceeding, the court shall appoint for any child alleged to
be abused or neglected a guardian ad litem. The department
or any of its staff may not be appointed as the guardian ad
litem in a judicial proceeding under this title. When
necessary the guardian ad litem may serve at public expense.

(2) The guardian ad litem is charged with the
representation of the child's interests. The guardian ad
litem has the following general duties:

(a) to conduct such-investigation-as-he investigations
that the guardian ad litem considers necessary to ascertain
the facts constituting the alleged abuse or neglect;

(b) to interview or observe the child who is the
subject of the proceeding;

(c) to have access to court, medical, psychological,

1 law enforcement, social services, and school records
2 pertaining to the child, his and the child's siblings, and
3 parents or custodians;

4 (d) to make written reports to the court concerning the
5 child's welfare;

6 (e) to appear and participate in all proceedings to the
7 degree necessary to adequately represent the child and make
8 recommendations to the court concerning the child's welfare;
9 and

10 (f) to perform ~~such~~ other duties as directed by the
11 court."

12 NEW SECTION. **Section 4.** Effective date. [This act] is
13 effective on passage and approval.

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10 **Section 3.** Section 41-3-303, MCA, is amended to read:

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7 degree necessary to adequately represent the child and make
8 recommendations to the court concerning the child's welfare;
9 and

10 (f) to perform ~~such~~ other duties as directed by the
11 court."

12 NEW SECTION. **Section 4.** Effective date. [This act] is
13 effective on passage and approval.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 4, 1993

Page 2 of 2
March 4, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 67 (first reading copy -- blue), respectfully report that House Bill No. 67 be amended as follows and as so amended be concurred in.

Signed: William Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, line 9.

Following: "~~INVESTIGATION~~,"

Insert: "PROHIBITING A COURT FROM ORDERING THE DEPARTMENT OF FAMILY SERVICES TO CONDUCT A CHILD CUSTODY INVESTIGATION EXCEPT IN CERTAIN CASES;"

2. Title, line 10.

Following: "~~40-4-215~~,"

Insert: "40-4-215,"

3. Page 3.

Following: line 19

Insert: "Section 2. Section 40-4-215, MCA, is amended to read:
"40-4-215. Investigations and reports. (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. ~~if the court orders the department of family services to conduct the investigation, the department may charge a reasonable fee. The department shall waive the fee for conducting the investigation if the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children, food stamps, or general relief benefits. The department of family services may not be ordered to conduct the investigation or draft a report unless the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children, food stamps, or general relief benefits and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests. The cost of the investigation and report shall must be paid according to the final order.~~

(2) In preparing his a report concerning a child, the investigator may consult any person who may have information about the child and his the child's potential custodial

arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if ~~he~~ the child has reached the age of 16 unless the court finds that ~~he~~ the child lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom ~~he~~ the investigator has consulted for cross-examination. A party may not waive his the right of cross-examination prior to the hearing."

Renumber: subsequent sections

-END-

Mr Amd. Coord.
by Sec. of Senate

Bartlett
Senator Carrying Bill

491226SC.Sma

SENATE

H/B 67
491226SC.Sma

1 HOUSE BILL NO. 67

2 INTRODUCED BY COCCHIARELLA

3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE
6 APPOINTMENT OF CERTAIN PUBLIC EMPLOYEES TO REPRESENT
7 CHILDREN IN CERTAIN JUDICIAL PROCEEDINGS; ~~PROHIBITING--A~~
8 ~~COURT--FROM--ORDERING--THE--DEPARTMENT-OF-FAMILY-SERVICES-TO~~
9 ~~CONDUCT-A-CHILD-CUSTODY-INVESTIGATION;~~ PROHIBITING A COURT
10 FROM ORDERING THE DEPARTMENT OF FAMILY SERVICES TO CONDUCT A
11 CHILD CUSTODY INVESTIGATION EXCEPT IN CERTAIN CASES;
12 AMENDING SECTIONS 40-4-205, 40-4-215, 40-4-215, 40-6-110,
13 AND 41-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
14 DATE."

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

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21 custody, and visitation. The county attorney, and the a
22 deputy county attorneys attorney, if any, or the department
23 of family services or any of its staff may not be appointed
24 for this purpose. The court shall enter an order for costs
25 and fees in favor of the child's attorney. The order shall

1 must be made against either or both parents, except that if
2 the responsible party is indigent, the costs shall must be
3 waived."

4 Section 2. ~~Section 40-4-215, MCA, is amended to read:--~~

5 "~~40-4-215.--investigations-and-reports--(1)--in-contested~~
6 ~~custody-proceedings-and-in-other-custody-proceedings--if--a~~
7 ~~parent--or--the-child's-custodian--so-requests--the-court-may~~
8 ~~order--an--investigation--and--report--concerning--custodial~~
9 ~~arrangements--for--the--child--if--the--court--orders--the~~
10 ~~department--of-family-services-to-conduct-the-investigation,~~
11 ~~the-department-may-charge-a-reasonable-fee.--The-department~~
12 ~~shall--waive-the-fee-for-conducting-the-investigation-if-the~~
13 ~~parent-or-the-child's-custodian-requesting-the-investigation~~
14 ~~is-a-recipient-of-aid-to-families-with--dependent--children,~~
15 ~~food--stamps--or-general-relief-benefits. The-department-of~~
16 ~~family-services--may--not--be--ordered--to--conduct--the~~
17 ~~investigation--or--draft--a--report--but--may--be--ordered-to~~
18 ~~consult-with-the-investigator-and-share-information-relevant~~
19 ~~to-the-child's-best-interests. The-cost-of-the-investigation~~
20 ~~and-report-shall must be-paid-according-to-the-final-order.~~

21 ~~(2)--in-preparing-his a report-concerning-a--child--the~~
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23 ~~about--the--child--and--his the-child's potential-custodial~~
24 ~~arrangements. Upon-order-of-the-court, the-investigator--may~~
25 ~~refer-the-child-to-professional-personnel-for-diagnosis. The~~

investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian, but the child's consent must be obtained if he the child has reached the age of 16 unless the court finds that he the child lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

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SECTION 2. SECTION 40-4-215, MCA, IS AMENDED TO READ:

"40-4-215. Investigations and reports. (1) In contested custody proceedings and in other custody proceedings if a

parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. If the court orders the department of family services to conduct the investigation, the department may charge a reasonable fee. The department shall waive the fee for conducting the investigation if the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children, food stamps, or general relief benefits. The department of family services may not be ordered to conduct the investigation or draft a report unless the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children, food stamps, or general relief benefits and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests. The cost of the investigation and report shall must be paid according to the final order.

(2) In preparing his a report concerning a child, the investigator may consult any person who may have information about the child and his the child's potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The

investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he the child has reached the age of 16 unless the court finds that he the child lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom---he the investigator has consulted for cross-examination. A party may not waive his the right of cross-examination prior to the hearing."

Section 3. Section 40-6-110, MCA, is amended to read:

"40-6-110. Parties. The child shall must be made a party to the action. ~~if he is a~~ A minor, ~~he--~~ shall must be

represented by his the minor's general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may not appoint the department of family services or any of its staff as guardian ad litem for the child. The natural mother, each man presumed to be the father under 40-6-105, and each man alleged to be the natural father shall must be made parties or, if not subject to the jurisdiction of the court, shall must be given notice of the action in a manner prescribed by the court and must be given an opportunity to be heard. The court may align the parties."

Section 4. Section 41-3-303, MCA, is amended to read:

"41-3-303. Guardian ad litem. (1) In every judicial proceeding, the court shall appoint for any child alleged to be abused or neglected a guardian ad litem. The department or any of its staff may not be appointed as the guardian ad litem in a judicial proceeding under this title. When necessary the guardian ad litem may serve at public expense.

(2) The guardian ad litem is charged with the representation of the child's interests. The guardian ad litem has the following general duties:

(a) ~~to conduct such investigation as he~~ investigations that the guardian ad litem considers necessary to ascertain the facts constituting the alleged abuse or neglect;

1 (b) to interview or observe the child who is the
2 subject of the proceeding;

3 (c) to have access to court, medical, psychological,
4 law enforcement, social services, and school records
5 pertaining to the child, ~~his~~ and the child's siblings, and
6 parents or custodians;

7 (d) to make written reports to the court concerning the
8 child's welfare;

9 (e) to appear and participate in all proceedings to the
10 degree necessary to adequately represent the child and make
11 recommendations to the court concerning the child's welfare;
12 and

13 (f) to perform such other duties as directed by the
14 court."

15 NEW SECTION. Section 5. Effective date. [This act] is
16 effective on passage and approval.

-End-