

HOUSE BILL 653

Introduced by Hansen, et al.

2/20	Introduced
2/20	Referred to Appropriations
2/20	First Reading
2/20	Fiscal Note Requested
3/02	Fiscal Note Received
3/04	Hearing
3/04	Fiscal Note Printed
3/05	Tabled in Committee

1 *House* BILL NO. *653*
 2 INTRODUCED BY *Steve Johnson, Keith Kelly, Russell*
B. Bawls, Sean Spence, Bartlett, Steve Owen, Brian
Wright, Lechuten, Steve Jenkins, Shelly
 3 A BILL FOR AN ACT ENTITLED: "AN ACT PROTECTING THE RIGHTS
 4 OF MINORS; CREATING THE OFFICE OF THE CHILDREN'S ADVOCATE;
 5 DEFINING THE POWERS AND DUTIES OF THE CHILDREN'S ADVOCATE;
 6 AUTHORIZING THE CHILDREN'S ADVOCATE TO INVESTIGATE THE NEED
 7 FOR LEGAL REPRESENTATION OF A CHILD AND TO REPRESENT A CHILD
 8 IN PROCEEDINGS INVOLVING ADOPTION, CHILD SUPPORT, DIVORCE,
 9 VISITATION, REVIEW OF FOSTER CARE STATUS, THE INTERSTATE
 10 COMPACT ON JUVENILES, REVIEW OF THE CHILD'S VOLUNTARY
 11 ADMISSION TO A MENTAL HEALTH FACILITY, AND A PETITION
 12 ALLEGING ABUSE, NEGLECT, OR DEPENDENCY; ADDING \$5 TO THE FEE
 13 FOR A PETITION FOR DISSOLUTION OF MARRIAGE TO FUND THE
 14 OFFICE AND STATUTORILY APPROPRIATING THE MONEY TO THE
 15 OFFICE; RESTRAINING THE PARTIES IN A DISSOLUTION OF MARRIAGE
 16 FROM DISSIPATING THE MARITAL ASSETS, DISTURBING THE PEACE OF
 17 THE OTHER PARTY, OR REMOVING A CHILD FROM THE JURISDICTION
 18 OF THE COURT; AND AMENDING SECTIONS 17-7-502, 25-1-201,
 19 40-4-105, 40-4-121, AND 40-4-205, MCA."

STATEMENT OF INTENT

23 A statement of intent is required for this bill because
 24 [section 10] grants authority to the children's advocate to
 25 adopt rules to implement [sections 1 through 10]. It is the

1 intent of the legislature that rules adopted by the
 2 children's advocate be based on existing ombudsman and
 3 advocacy programs so that the program operates in a manner
 4 similar to and compatible with other state advocacy
 5 programs.

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

8 NEW SECTION. Section 1. Definitions. As used in
 9 [sections 1 through 10], the following definitions apply:

10 (1) "Child" means a person under 18 years of age.

11 (2) "Children's advocate" means the person appointed to
 12 hold the office created in [section 2].

13 (3) "Mental health facility" has the meaning provided
 14 in 53-21-102.

15 NEW SECTION. Section 2. Children's advocate --
 16 appointment -- term of office -- vacancy. (1) There is a
 17 children's advocate in the governor's office.

18 (2) The governor shall appoint and set the salary of
 19 the children's advocate.

20 (3) The children's advocate shall serve a term of 3
 21 years and may be reappointed at the discretion of the
 22 governor.

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

25 NEW SECTION. Section 3. Qualifications. To be

1 qualified for appointment as the children's advocate, a
2 person must:

- 3 (1) be a licensed attorney;
- 4 (2) have been admitted to the practice of law in
5 Montana for at least 5 years immediately prior to assuming
6 the office of the children's advocate; and
- 7 (3) be experienced in areas of law that affect the
8 interests, rights, duties, and privileges of children.

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

10 The children's advocate may:

- 11 (1) accept appointment by a Montana court to serve as
12 attorney or guardian ad litem to represent the interests of
13 a child;
- 14 (2) except when the children's advocate has been
15 appointed as guardian ad litem of a child whose estate is to
16 be protected, accept appointment by a Montana court to serve
17 as conservator of the estate of a child as provided for
18 under Title 72;
- 19 (3) investigate, initiate, or intervene in any legal or
20 administrative action in which a child's interest may be
21 affected;
- 22 (4) issue publications and reports of studies and
23 research that promote protection of or advocacy on behalf of
24 children;
- 25 (5) initiate activities or cooperate with other

1 agencies or organizations, public or private, to:

- 2 (a) assess reports of suspected institutional child
3 abuse or neglect;
- 4 (b) promote the establishment and operation of
5 institutional child advocacy programs;
- 6 (c) develop alternatives to the institutionalization of
7 children;
- 8 (d) develop plans for corrective action if reports of
9 institutional child abuse or neglect are made and make
10 recommendations to the attorney general for criminal or
11 civil action;
- 12 (e) plan and conduct educational programs designed to
13 improve or increase the quality and frequency of advocacy on
14 behalf of the legal interests of children;
- 15 (f) establish prevention programs designed to reduce
16 the incidence among children of drug or alcohol use,
17 suicide, poor school attendance, smoking, adolescent
18 pregnancy, juvenile delinquency and crime, and similar
19 activities;
- 20 (g) encourage early intervention and development of
21 programs to reduce the incidence of problems listed in
22 subsection (5)(f) by identifying the population of children
23 most at risk; and
- 24 (h) facilitate interdepartmental coordination of
25 services to prevent children from engaging in the activities

1 listed in subsection (5)(f);

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

6 (7) evaluate existing programs and services for
7 children and make recommendations for improvement to the
8 governor and appropriate state agencies;

9 (8) recommend legislation concerning the legal rights
10 or interests of children that the children's advocate
11 considers necessary and desirable;

12 (9) encourage and stimulate recognition of the legal
13 rights and interests of children and the availability and
14 quality of legal representation of children; and

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

18 **NEW SECTION. Section 5. Children's advocate -- duties.**

19 The children's advocate shall:

20 (1) review all reports of incidents in which a child's
21 legal rights or interests may have been infringed and take
22 appropriate or necessary action to protect the rights or
23 interests of the child; and

24 (2) at least once a year, prepare and transmit to the
25 governor, attorney general, legislature, and chief justice

1 of the Montana supreme court a report of the activities of
2 the children's advocate and the discharge of all
3 responsibilities assigned to the children's advocate by law
4 or directive.

5 **NEW SECTION. Section 6. Acceptance of gifts,**
6 **donations, and grants.** The children's advocate may accept
7 gifts, donations, and grants for any purpose connected with
8 the work, programs, or activities of the office of the
9 children's advocate.

10 **NEW SECTION. Section 7. Assistant children's advocates**
11 **-- appointment -- qualifications.** (1) The governor or the
12 children's advocate with the consent of the governor may
13 appoint assistant children's advocates as necessary to carry
14 out the provisions of [sections 1 through 10].

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

17 (a) a licensed attorney; and

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

19 **NEW SECTION. Section 8. Representation of child --**
20 **investigation -- appointment -- duties -- costs.** (1) A court
21 may, on its own motion, the motion of any party, or the
22 motion of the children's advocate, order the children's
23 advocate to conduct an investigation and file a written
24 report with the court concerning whether appointment of an
25 attorney, a guardian ad litem, or the children's advocate

1 would be in the best interests of the child who is the
 2 subject of a petition alleging abuse, neglect, or
 3 dependency; a contested custody case; a petition for
 4 adoption; a proceeding involving the Interstate Compact on
 5 Juveniles; a review of foster care status as provided in
 6 41-3-1115; or a review of the child's voluntary admission to
 7 a mental health facility as provided in [section 9]. The
 8 report is confidential.

9 (2) A court may, on its own motion, the motion of any
 10 party, or the motion of the children's advocate, appoint an
 11 attorney, a guardian ad litem, or the children's advocate to
 12 represent a child referred to in subsection (1). The
 13 appointed person:

14 (a) may conduct investigations the person considers
 15 necessary to ascertain the facts;

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

17 (c) must be given access to court, medical,
 18 psychological, law enforcement, and social services records
 19 pertaining to the child and the child's siblings and parents
 20 or custodians;

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

23 (e) may appear and participate in all proceedings to
 24 the degree necessary to adequately represent the child and
 25 make recommendations to the court concerning the child's

1 welfare; and

2 (f) shall perform other duties as directed by the
 3 court.

4 (3) If a court orders an investigation or appoints an
 5 attorney, a guardian ad litem, or the children's advocate to
 6 represent a child, the court shall enter an award for costs
 7 and fees in favor of the attorney, guardian ad litem, or
 8 children's advocate. The order must be made against all
 9 parties, except that if a party is indigent, payment of
 10 costs must be waived as to that party. If the court orders
 11 an investigation or appoints the children's advocate to
 12 represent the child, the clerk of the court, upon receipt of
 13 payment, shall transmit the payment to the children's
 14 advocate.

15 NEW SECTION. Section 9. Voluntary admission of minor
 16 for mental health treatment -- review -- written report. (1)
 17 The medical and legal status of a patient in a mental health
 18 facility who is under 18 years of age, who was voluntarily
 19 admitted in accordance with 53-21-112, and whose application
 20 for admission was made by the child's parent or legal
 21 guardian must be reviewed by and a written report made by
 22 the mental health facility at least once every 3 months.

23 (2) The review and written report must include:

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

25 (b) the names and address or addresses of the child's

1 parents;

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

3 (d) the name of the primary physician who is
4 responsible for treatment of the child;

5 (e) the date of the child's admission to the mental
6 health facility;

7 (f) the diagnosis of the child;

8 (g) the services provided to the child and the child's
9 parents;

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

11 (i) justification for continued treatment;

12 (j) the date the review was written; and

13 (k) the name of the person who wrote the review.

14 (3) A copy of the report must be forwarded by the
15 mental health facility to the children's advocate.

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

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

20 "40-4-205. Representation of child -- investigation and
21 report -- appointment -- duties -- costs. (1) The court may,
22 on its own motion, the motion of any party, or the motion of
23 the children's advocate, order the children's advocate to
24 conduct an investigation and file a written report with the
25 court concerning whether appointment of an attorney, a

1 guardian ad litem, or the children's advocate would be in
2 the best interests of a minor dependent child with respect
3 to the minor's support, custody, and visitation. The report
4 must be confidential.

5 (2) The court may, on its own motion, the motion of any
6 party, or the motion of the children's advocate, appoint an
7 attorney, a guardian ad litem, or the children's advocate to
8 represent the interests of a minor dependent child with
9 respect to his the child's support, custody, and visitation.
10 The county attorney and the deputy county attorneys, if any,
11 may not be appointed for this purpose. The court shall enter
12 an order for costs and fees in favor of the child's
13 attorney, the guardian ad litem, or the children's advocate.
14 The order shall must be made against either or both parents,
15 except that if the responsible party is indigent, the costs
16 shall must be waived."

17 **Section 12.** Section 40-4-105, MCA, is amended to read:

18 "40-4-105. Procedure -- commencement -- pleadings --
19 abolition of existing defenses. (1) The verified petition in
20 a proceeding for dissolution of marriage or legal separation
21 shall must allege that the marriage is irretrievably broken
22 and shall must set forth:

23 (a) the age, occupation, and residence of each party
24 and his the party's length of residence in this state;

25 (b) the date of the marriage and the place at which it

1 was registered;

2 (c) that the jurisdictional requirements of 40-4-104
3 exist and that the marriage is irretrievably broken in that
4 either:

5 (i) the parties have lived separate and apart for a
6 period of more than 180 days next preceding the commencement
7 of ~~this~~ the proceeding; or

8 (ii) there is serious marital discord which that
9 adversely affects the attitude of one or both of the parties
10 towards the marriage, and there is no reasonable prospect of
11 reconciliation;

12 (d) the names, ages, and addresses of all living
13 children of the marriage and whether the wife is pregnant;

14 (e) any arrangements as to support, custody, and
15 visitation of the children and maintenance of a spouse; and

16 (f) the relief sought.

17 (2) Either or both parties to the marriage may initiate
18 the proceeding.

19 (3) If a proceeding is commenced by one of the parties,
20 the other party must be served in the manner provided by the
21 Montana Rules of Civil Procedure and may within 20 days
22 after the date of service file a verified response. No A
23 decree may not be entered until 20 days after the date of
24 service.

25 (4) Previously existing defenses to divorce and legal

1 separation, including but not limited to condonation,
2 connivance, collusion, recrimination, insanity, and lapse of
3 time, are abolished.

4 (5) The court may join additional parties proper for
5 the exercise of its authority to implement this chapter.

6 (6) Upon the filing of the petition, each party is:

7 (a) restrained from transferring, encumbering,
8 concealing, or otherwise disposing of any property except in
9 the usual course of business or for the necessities of life
10 and shall notify the other party of expenditures proposed to
11 be made after the petition is filed;

12 (b) enjoined from molesting or disturbing the peace of
13 the other party or of a child of either party; and

14 (c) enjoined from removing a natural child of either
15 party from the jurisdiction of the court."

16 **Section 13.** Section 40-4-121, MCA, is amended to read:

17 **"40-4-121. Temporary order or temporary injunction. (1)**
18 **In a proceeding for dissolution of marriage or for legal**
19 **separation or in a proceeding for disposition of property or**
20 **for maintenance or support following dissolution of the**
21 **marriage by a court which that lacked personal jurisdiction**
22 **over the absent spouse, either party may move for temporary**
23 **maintenance or temporary support of a child of the marriage**
24 **entitled to support. The motion ~~shall~~ must be accompanied by**
25 **an affidavit setting forth the factual basis for the motion**

1 and the amounts requested.

2 (2) As a part of a motion for temporary maintenance or
3 support or by independent motion accompanied by affidavit,
4 either party may request the court to issue a temporary
5 order or injunction for any of the following relief:

6 (a) ~~restraining---any---person---from---transferring,~~
7 ~~encumbering,---concealing,---or---otherwise---disposing---of---any~~
8 ~~property---except---in---the---usual---course---of---business---or---for---the~~
9 ~~necessities---of---life---and,---if---so---restrained,---requiring---him---to~~
10 ~~notify---the---moving---party---of---any---proposed---extraordinary~~
11 ~~expenditures---made---after---the---order---is---issued~~ modifying a
12 restraining order or injunction imposed by 40-4-105(6);

13 (b) ~~enjoining---a---party---from---molesting---or---disturbing---the~~
14 ~~peace---of---the---other---party---or---of---any---child;~~

15 ~~(c)~~ excluding a party from the family home or from the
16 home of the other party upon a showing that physical or
17 emotional harm would otherwise result; and

18 ~~(d)---enjoining---a---party---from---removing---a---child---from---the~~
19 ~~jurisdiction---of---the---court,---and~~

20 ~~(c)~~ providing other injunctive relief proper in the
21 circumstances.

22 (3) A person may seek the relief provided for in
23 subsection (2) ~~of---this---section~~ without filing a petition
24 under this part for a dissolution of marriage or legal
25 separation by filing a verified petition:

1 (a) alleging physical abuse, harm, or bodily injury
2 against the petitioner by a family or household member or
3 the threat of physical abuse, harm, or bodily injury against
4 the petitioner by a family or household member that causes
5 the petitioner to reasonably believe that the offender has
6 the present ability to execute the threat; and

7 (b) requesting relief under Title 27, chapter 19, part
8 3. Any preliminary injunction entered under this subsection
9 must be for a fixed period of time, not to exceed 1 year,
10 and may be modified as provided in Title 27, chapter 19,
11 part 4, and 40-4-208. Persons who may request relief under
12 this subsection include spouses, former spouses, and persons
13 cohabiting or who have cohabited with the other party within
14 1 year immediately preceding the filing of the petition.

15 (4) The court may issue a temporary restraining order
16 for a period not to exceed 20 days without requiring notice
17 to the other party only if it finds on the basis of the
18 moving affidavit or other evidence that irreparable injury
19 will result to the moving party if no an order is not issued
20 until the time for responding has elapsed.

21 (5) A response may be filed within 20 days after
22 service of notice of motion or at the time specified in the
23 temporary restraining order.

24 (6) On the basis of the showing made and in conformity
25 with 40-4-203 and 40-4-204, the court may issue a temporary

1 injunction and an order for temporary maintenance or support
2 in amounts and on terms just and proper in the circumstance.

3 (7) A temporary order or temporary injunction:

4 (a) does not prejudice the rights of the parties or the
5 child ~~which~~ that are to be adjudicated at subsequent
6 hearings in the proceeding;

7 (b) may be revoked or modified before final decree on a
8 showing by affidavit of the facts necessary to revocation or
9 modification of a final decree under 40-4-208;

10 (c) terminates upon order of the court or when a final
11 decree is entered or when a petition for dissolution or
12 legal separation is voluntarily dismissed; and

13 (d) when issued under this section must conspicuously
14 bear the following: "Violation of this order is a criminal
15 offense under 45-5-626."

16 (8) When the petitioner has fled the parties'
17 residence, notice of petitioner's new residence must be
18 withheld except by order of the court for good cause shown."

19 **Section 14.** Section 25-1-201, MCA, is amended to read:

20 "25-1-201. Fees of clerk of district court. (1) The
21 clerk of the district court shall collect the following
22 fees:

23 (a) at the commencement of each action or proceeding,
24 except a petition for dissolution of marriage, from the
25 plaintiff or petitioner, \$80; for filing a complaint in

1 intervention, from the intervenor, \$80; for filing a
2 petition for dissolution of marriage, a fee of ~~\$120~~ \$125;
3 and for filing a petition for legal separation, a fee of
4 \$120;

5 (b) from each defendant or respondent, on his
6 appearance, \$60;

7 (c) on the entry of judgment, from the prevailing
8 party, \$45;

9 (d) for preparing copies of papers on file in his the
10 clerk's office, 50 cents per page for the first five pages
11 of each file, per request, and 25 cents per for each
12 additional page thereafter;

13 (e) for each certificate, with seal, \$2;

14 (f) for oath and jurat, with seal, \$1;

15 (g) for search of court records, 50 cents for each year
16 searched, not to exceed a total of \$25;

17 (h) for filing and docketing a transcript of judgment
18 or abstract of judgment from all other courts, \$25;

19 (i) for issuing an execution or order of sale on a
20 foreclosure of a lien, \$5;

21 (j) for transmission of records or files or transfer of
22 a case to another court, \$5;

23 (k) for filing and entering papers received by transfer
24 from other courts, \$10;

25 (l) for issuing a marriage license, \$30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$55;

(o) for filing a declaration of marriage without solemnization, \$30;

(p) for filing a motion for substitution of a judge, \$100.

(2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no a district court fund exists does not exist, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be deposited in and credited

to the county general fund, and \$9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$40 must be deposited in the state general fund, \$35 must be remitted to the state to be deposited as provided in 19-5-404, \$5 must be deposited in the children's trust fund account established by 41-3-702, \$5 must be deposited in the state special revenue fund account created in [section 15], and \$20 must be deposited in and credited to the district court fund. If no a district court fund exists does not exist, the \$20 must be deposited in the general fund for district court operations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), \$35;

(ii) from each defendant or respondent, on his appearance, as provided in subsection (1)(b), \$25;

(iii) on the entry of judgment as provided in subsection (1)(c), \$15;

(iv) on the entry of judgment as provided in subsection

(1)(h), \$20;

(v) for issuing an execution or order of sale as provided in subsection (1)(i), \$3; and

(vi) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), \$15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be remitted to the state to be deposited as provided in 19-5-404.

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no a district court fund exists does not exist, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries."

NEW SECTION. Section 15. State treasury account to

fund office of children's advocate. There is an account in the state special revenue fund. As provided in 25-1-201, \$5 of the fee for filing a petition for dissolution of marriage must be deposited in the account. The money in the account is statutorily appropriated, as provided in 17-7-502, to the office of the children's advocate to be used to administer the office.

Section 16. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;

1 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
 2 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;
 3 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;
 4 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
 5 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;
 6 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;
 7 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;
 8 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;
 9 39-71-2504; [section 15]; 44-12-206; 44-13-102; 53-6-150;
 10 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507;
 11 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103;
 12 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301;
 13 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

14 (4) There is a statutory appropriation to pay the
 15 principal, interest, premiums, and costs of issuing, paying,
 16 and securing all bonds, notes, or other obligations, as due,
 17 that have been authorized and issued pursuant to the laws of
 18 Montana. Agencies that have entered into agreements
 19 authorized by the laws of Montana to pay the state
 20 treasurer, for deposit in accordance with 17-2-101 through
 21 17-2-107, as determined by the state treasurer, an amount
 22 sufficient to pay the principal and interest as due on the
 23 bonds or notes have statutory appropriation authority for
 24 the payments. (In subsection (3): pursuant to sec. 7, Ch.
 25 567, L. 1991, the inclusion of 19-6-709 terminates upon

1 death of last recipient eligible for supplemental benefit;
 2 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of
 3 22-3-811 terminates June 30, 1993.)"

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0653, 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. A state special revenue account is also created for deposit of \$5 of the fee for petition for dissolution of marriage and a statutory appropriation authorized from the account to the Office of the Children's Advocate.

ASSUMPTIONS:

Governor's Office

1. The Children's Advocate shall be located in the Office of the Children's Advocate 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 a mid-range 1.00 FTE Grade 18.
2. 1.00 FTE Assistant Children's Advocate will be appointed at a salary level of Grade 15, entry level. 1.00 FTE legal secretary will also be employed at Grade 9, entry level.
3. 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. It is assumed that legal representation for new cases will generally be handled by county attorneys.
4. Actual representation of children in courts will take the Advocate to approximately half the counties in the state each fiscal year.
5. The services will be partly funded by a \$5 fee increase on marriage dissolution which is to be deposited in a new state special revenue account which is statutorily appropriated to the Office of the Children's Advocate. Since the estimated annual revenue from the \$5 fee is insufficient to cover the entire estimated cost of the program, it is assumed that the balance of the program will be funded by general fund.

Department of Social and Rehabilitation Services

6. Although the bill provides the Children's Advocate with power to intervene in cases in which the Child Support Enforcement Division (CSED) may be a party at interest, the duties of the Children's Advocate will not normally cause this to happen. Child abuse may be present in some cases the CSED is pursuing for child support but the number of cases in which the Children's Advocate may become involved is not subject to reasonable estimate.
7. It is assumed that this bill will have no significant fiscal impact on the CSED. However, any CSED expenses for Children's Advocate activities would not be eligible for federal financial participation and would be paid from state special revenue or general fund.

Judiciary

8. Average annual petitions for dissolution of marriage are assumed to be 6,580. Revenue from the additional \$5 fee is estimated to be \$32,900 per year (6,580 x \$5).

(continued)

Dave Lewis

DAVE LEWIS, BUDGET DIRECTOR
Office of Budget and Program Planning

3-2-93

DATE

STELLA JEAN HANSEN, PRIMARY SPONSOR

DATE

Fiscal Note for HB0653, as introduced

HB 653

FISCAL IMPACT:

Governor's Office-Office of the Children's Advocate:

	FY '94			FY '95		
<u>Expenditures</u>	<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	3.00	3.00	0.00	3.00	3.00
Personal Services	0	80,979	80,979	0	80,979	80,979
Operating Expenses	0	21,050	21,050	0	21,050	21,050
Equipment	0	9,700	9,700	0	0	0
Total	0	131,164	131,164	0	121,464	121,464
<u>Funding</u>						
General Fund	0	98,264	98,264	0	88,564	88,564
State Special Revenue	0	32,900	32,900	0	32,900	32,900
Total	0	131,164	131,164	0	121,464	121,464
<u>Revenue:</u>						
Dissolution Marriage fee (State Special)	0	32,900	32,900	0	32,900	32,900
Net Impact to General Fund			98,264			88,564
Net Impact to State Special Revenue			0			0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

There may be some increase in workload of county attorneys.