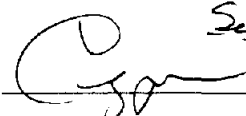


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INTRODUCED BY Senate BILL NO. 250


A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA FAMILY LAW APPEALS COURT; AUTHORIZING THE MONTANA SUPREME COURT TO ADOPT RULES APPLICABLE TO COMPOSITION AND PROCEDURES FOR THE FAMILY LAW APPEALS COURT; PROVIDING FOR APPEAL TO THE SUPREME COURT BY WRIT OF CERTIORARI; AMENDING SECTIONS 19-5-103, 27-25-102, 40-8-124, AND 40-8-127, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

WHEREAS, a Family Law Appeals Court will significantly strengthen Montana family values by expertly and expeditiously resolving legal cases applicable to families and children; and

WHEREAS, Article VII, section 1, of The Montana Constitution vests judicial power in Montana's supreme court, district courts, justice courts, and such other courts as may be provided by law, the latter of which may include a Family Law Appeals Court created to carry out the Legislature's intent in interpreting and applying Montana laws that are protective of family values and rights.

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana Family Law Appeals Court Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 7] is to create an intermediate court of appeal for family law cases to expedite resolution of appeals of family law cases by establishing the Montana family law appeals court. The Montana family law appeals court shall hear appeals from district courts in cases involving issues of law related to families and children.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 7] the following definitions apply:

- (1) "Court" means the Montana family law appeals court.
- (2) "Supreme court" means the Montana supreme court.

1 **NEW SECTION. Section 4. Establishment of court -- jurisdiction.** (1) There is a family law appeals
2 court. The court has two divisions, a western division and an eastern division, whose locations are to be
3 established by supreme court rule.

4 (a) The western division is composed of the 1st, 2nd, 3rd, 4th, 5th, 11th, 18th, 19th, 20th, and
5 21st judicial districts.

6 (b) The eastern division is composed of the 6th, 7th, 8th, 9th, 10th, 12th, 13th, 14th, 15th, 16th,
7 and 17th judicial districts.

8 (2) The court shall hear and decide all appeals from district courts that are related to dissolution
9 of marriage and other family law issues, including but not limited to:

10 (a) separation, allowance, alimony, support and custody of children, allowance of any applicable
11 counsel and witness fees, and all matters related to real and personal property arising out of marriage
12 dissolution;

13 (b) all antenuptial agreements, property settlement agreements, and other contracts between
14 persons who at the time of execution of a contract are husband and wife or plan to enter into that
15 relationship;

16 (c) complaints for support of parents and children;

17 (d) all legal actions related to guardianship of any child who has been placed temporarily or
18 otherwise in the care, custody, and control of the department of public health and human services or
19 another agency or entity designated by law;

20 (e) all adoptions and changes of names of children under 18 years of age;

21 (f) all paternity issues involving children born out of wedlock and the provision for children born
22 out of wedlock or their mothers;

23 (g) child marriages;

24 (h) desertion, abandonment, or failure to provide subsistence for a dependent child;

25 (i) all cases involving past-due child support; and

26 (j) all other matters related to families or children as specified by rules adopted by the supreme
27 court.

28 (3) Court appeals shall be heard by the court division encompassing the judicial district where the
29 order or judgment that is being appealed was issued.

30 (4) The court is a court of record, and all final court decisions must be published as required by

1 rules adopted by the supreme court.

2

3 **NEW SECTION. Section 5. Composition.** (1) Each division shall have a chief justice and at least
4 two additional judges appointed by a majority of the supreme court justices, as provided by supreme court
5 rules, from among the following persons:

6 (a) one or more district court judges currently serving in a judicial district within the division, who
7 shall serve on the court for no more than 12 months in any 6-year period. A district court judge sitting on
8 the court may not participate in an appeal from a district court case in which the judge participated.

9 (b) one or more retired judges or justices who meet the qualifications set forth in 19-5-103(1). A
10 retired judge or justice shall receive compensation as provided in 19-5-103(2). The term of a retired judge
11 or justice must be established by supreme court rule.

12 (2) All court decisions must be made in writing by a majority vote of a panel of three or more court
13 judges.

14 (3) All court judges must be subject to restrictions on the practice of law and the administration
15 of estates, as provided in Title 3, chapter 1, part 6.

16

17 **NEW SECTION. Section 6. Appeals of court decisions to supreme court.** A court decision may
18 be appealed to the supreme court by writ of certiorari. The supreme court may, in its discretion, hear or
19 deny an appeal.

20

21 **NEW SECTION. Section 7. Additional supreme court rulemaking authority.** In addition to any other
22 rulemaking authority or power provided for in [sections 1 through 7], the supreme court may promulgate
23 rules applicable to all other court activities, including but not limited to:

24 (1) court mediation;

25 (2) court filing fees consistent with the fees applicable to supreme court appeals;

26 (3) selection and retention of all court administrative personnel, whose compensation, benefits,
27 retirement, and employment conditions must be consistent with compensation, benefits, retirement, and
28 employment conditions applicable to supreme court administrative personnel;

29 (4) appointment of court consultants, masters, and other experts;

30 (5) training and professional education in family law issues for court judges and administrative

1 personnel;

2 (6) procurement of all equipment and acquisition of any real property required for court activity;

3 and

4 (7) court procedural rules.

5

6 **Section 8.** Section 19-5-103, MCA, is amended to read:

7 **"19-5-103. Call of retired judge or justice for duty.** (1) ~~Every~~ A judge or justice who has voluntarily
 8 retired after 8 years of service ~~shall~~ is, if physically and mentally able, ~~be~~ subject to call by the supreme
 9 court or the chief justice to aid and assist the supreme court, the Montana family law appeals court, any
 10 district court, or any water court under directions as the supreme court may give, including the examination
 11 of the facts, cases, and authorities cited, and the preparation of opinions for and on behalf of the supreme
 12 court, the Montana family law appeals court, a district court, or a water court, or to serve as water judge.
 13 The opinions, ~~when and if~~ and to the extent approved by the court, may ~~by the court~~ be ordered to
 14 constitute the opinion of the court. The court and the retired judge or justice may, subject to any rule that
 15 the supreme court may adopt, perform any and all duties preliminary to the final disposition of cases that
 16 are not inconsistent with the constitution of the state.

17 (2) A retired judge or justice, when called to service, must be reimbursed for actual expenses, if
 18 any, in responding to the call. In addition, for each day of service a retired justice or judge is entitled to
 19 receive compensation in an amount equal to one-twentieth of the monthly salary then currently applicable
 20 to the judicial position in which the service is rendered minus an amount equal to one-twentieth of the
 21 monthly retirement benefit the retired justice or judge is receiving, if any, for each day of service rendered."
 22

23 **Section 9.** Section 27-25-102, MCA, is amended to read:

24 **"27-25-102. When and by whom granted.** A writ of review may be granted by:

25 (1) the supreme court and any justice of the supreme court, in proceedings for contempt in the
 26 district court;

27 (2) the supreme court in proceedings for appeal from the Montana family law appeals court; or

28 ~~(2)(3)~~ the supreme court or the district court or any judge of those courts, when a lower tribunal,
 29 board, or officer exercising judicial functions has exceeded the jurisdiction of the tribunal, board, or officer
 30 and there is no appeal or, in the judgment of the court, any plain, speedy, and adequate remedy."

1 **Section 10.** Section 40-8-124, MCA, is amended to read:

2 **"40-8-124. Interlocutory and final decree.** (1) Upon examination of the report described in
3 40-8-122, if a report has been considered necessary by the court, and after hearing, the court may issue
4 an interlocutory decree giving the care and custody to the petitioners pending the further order of the court.

5 (2) When a petition has been filed seeking the adoption of a child, the court shall cause service of
6 process to be made on the parent or parents of the child, except in those cases provided in this section,
7 in the following manner:

8 (a) The court shall order a citation to issue to the parent or parents in the name of the state of
9 Montana and under the seal of the court directing the parent or parents to appear in court at a time to be
10 fixed by the court and show cause why the petition should not be granted.

11 (b) The citation, together with a copy of the petition for adoption, must be personally served upon
12 the parent or parents. If, however, a parent or parents cannot be found within this state, service may be
13 made by publication of a copy of the citation in the manner provided for the publication of summons by
14 Rule 4, M.R.Civ.P.

15 (3) If, after completion of service, any parent served does not appear, the court may act upon the
16 petition and the order of the court is binding upon all persons served. However, a person may appeal from
17 the order in the manner and form provided for ~~appeals from a judgment in civil~~ sections 1 through 7 for
18 family law actions.

19 (4) The petitioners and the child shall appear at the hearing, unless the presence of the child is
20 waived by the court.

21 (5) Service of process need not be made on a parent who has consented in writing to an adoption
22 or on any parent whose consent to adoption is not required under the provisions of 40-8-111, and service
23 of process may not be made on any parent who has relinquished the child to the department of public
24 health and human services or an adoption agency licensed by the department.

25 (6) After an interlocutory decree has been issued by the court or after the date of placement for
26 adoption, the investigator, if any, shall observe the child in the child's adoptive home and report in writing
27 to the court within 6 months on any circumstances or conditions that may have a bearing on the adoption.
28 After 6 months from the date of the interlocutory decree or the date of placement for adoption, the
29 petitioners may apply to the court for a final decree of adoption. The court must set a time and place for
30 final hearing. Notice of the time and date of the hearing must be served on the department of public health

1 and human services or the licensed child-placing agency or any other person named by the court. The
2 investigator, if any, shall file with the court a written report of the investigator's findings and
3 recommendations and certify that the described investigation, if any, has been made since the granting of
4 the interlocutory decree or the date of placement for adoption. After hearing on the application, at which
5 the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court
6 may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child. If the
7 adoption is denied, an appropriate order must be made as to the future custody of the child."

8

9 **Section 11.** Section 40-8-127, MCA, is amended to read:

10 **"40-8-127. Appeal.** An appeal may be taken from any final order, judgment, or decree rendered
11 ~~hereunder~~ in the district court by any aggrieved person ~~aggrieved thereby~~, in the manner provided for
12 ~~appeals from the court in other civil matters~~ [sections 1 through 7] for family law actions."

13

14 **NEW SECTION. Section 12. Codification instruction.** [Sections 1 through 7] are intended to be
15 codified as an integral part of Title 3, and the provisions of Title 3 apply to [sections 1 through 7].

16

17 **NEW SECTION. Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
19 applications, the part remains in effect in all valid applications that are severable from the invalid
20 applications.

21

22 **NEW SECTION. Section 14. Effective date.** (1) Except as provided in subsection (2), [this act]
23 is effective January 1, 1999.

24 (2) The supreme court may adopt rules to implement [this act] prior to January 1, 1999.

25

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0250, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

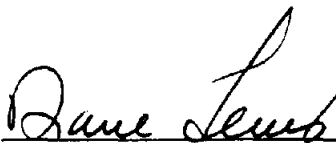
An act creating the Montana family law appeals court; authorizing the Montana Supreme Court to adopt rules applicable to composition and procedures for the family law appeals court; providing for appeal to the Supreme Court a writ of certiorari.

ASSUMPTIONS:


1. Because SB 250 is effective January 1, 1999, the fiscal impact to the Judiciary is anticipated to be minor and would be absorbed by the branch request as contained in Governor's Executive Budget.
2. Prior to January 1, 1999, the Supreme Court would establish rules to implement the legislation. No additional costs are anticipated to complete this task. However, during the last six months of fiscal 1999 (January 1, 1999 to June 30, 1999), some operational costs would be incurred (postage, telephone, supplies, photocopying, and travel). The costs are anticipated to be minimal and would be absorbed within the current level budget.

FISCAL IMPACT:

None.

 2.5.97

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2/6/97

BRUCE CRIPPEN, PRIMARY SPONSOR DATE

Fiscal Note for SB0250, as introduced

SB 250