

SJR 22: Evaluate Current Procedures in Family Law Cases

Draft Study Plan

Prepared for the Law & Justice Interim Committee
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for discussion on July 10, 2013

INTRODUCTION AND STUDY TASKS

The 2013 Legislature enacted Senate Joint Resolution 22 (SJR 22) to recommend an interim study to evaluate current court procedures in family law cases and to identify alternatives. Legislators ranked the study ninth out of 17 study resolutions in the postsession poll of interim studies. The Legislative Council met in May 2013 and assigned SJR 22 to the Law & Justice Interim Committee (LJIC).

Senator Larry Jent carried SJR 22. The resolution notes the leap in the number of case filings in Montana's district courts and highlights that a large percentage of these cases involve family law or domestic relations. It also states that many of the family law cases involve at least one party who is not represented by an attorney. The resolution concludes that the combination of an increased caseload, the highly personal and sometimes contentious nature of family law cases, and the number of unrepresented litigants "have the dual effect of overwhelming the bench and depriving litigants of the prompt, careful consideration they deserve".

Consequently, the study requests that a committee:

- evaluate the cost and effectiveness of Montana's current court processes in addressing domestic relations matters;
- research family law models and approaches (legislative and otherwise) being used in other states; and
- identify measures that will help improve the administration of justice and promote the nonadversarial resolution of family law disputes.

FAMILY LAW IN MONTANA

Family or domestic relations cases in Montana can span the range from a simple separation or dissolution to difficult, complex cases that attempt to resolve matters such as the custody of children, child support or maintenance payments to a former spouse, establishment of paternity, and the division of property and debts. Cases that involve family or partner violence or accusations of it can add tension to what are often already highly charged matters.

Statistics made available by the Judicial Branch show that nearly 10,900 cases involving domestic relations or paternity were filed or reopened in Montana's district courts in 2012. That number is more than 20% of all cases filed or reopened in the district courts that year.

Add to this mix a large number of litigants who are self-represented and a recipe is created for long, drawn-out proceedings that satisfy few of the parties involved, including the families, attorneys, and judges.

While the body of the study resolution does not specifically direct the LJIC to address the matter of self-represented litigants in domestic relations cases, it is unlikely that the committee will escape the topic as it progresses through this study.

STUDY RESOURCES

The SJR 22 study could quickly become complex, but the LJIC will not be tackling it alone or unaided. Included in testimony on SJR 22 during standing committee hearings were letters from two District Court Judges who supported the study. The Court Administrator of the Judicial Branch expressed support for the study, as did a Montana Supreme Court Justice and several other interested individuals and organizations, including representatives from the Montana Judges Association and the State Bar of Montana. All of these sources could help the LJIC identify family law models to research.

In fact, the LJIC studied the interrelated problem of access to justice for lower-income litigants in 2005-2006. A committee-drafted bill failed during the 2007 Legislature, but the Legislature did appropriate general fund money to the Judicial Branch for a program to provide information and other resources to self-represented litigants.

The program is called the Court Help Program, which has been funded by subsequent Legislatures through various mechanisms. (*Summary of Performance Evaluation Fact Sheet*, LFD, June 8, 2012). Studies, programs, and data compiled and created by the Program's staff could prove useful to the LJIC.

The Montana Supreme Court established an Access to Justice Commission in the spring of 2012 to address access to justice for all in Montana. Among the 18 members are 2 legislators: Senator Rick Ripley and Representative Chuck Hunter. The Commission itself then created a Committee on Self-Represented Litigants.

Neither the Program nor the Commission focuses solely on litigants in domestic relations cases, but both could provide useful insights for the LJIC.

The State Bar of Montana also has a Justice Initiatives Committee whose work might dovetail with that study.

The National Conference of State Legislatures also maintains 50-state databases of recent legislation and other resources to help the committee's research into how other states or jurisdictions address family law or domestic relations cases.

OUTLINE OF STUDY ACTIVITY

The study will include the following basic activities during the time periods noted:

1. Compile background information: June 2013 - January 2014. This stage is designed to help the LJIC gather information about current court processes relating to domestic relations and family law. It includes developing a list of interested parties that can assist with providing data, relevant reading material, and suggesting state/district/local models for further research. Activities and work products could include:
 - a. panel presentations from stakeholders such as district court judges, other judicial officials and staff, attorneys, and members of work groups concentrating on family law concerns. Panels could cover the existing system and problems, evaluation of the costs of the current system, and Montanans' experiences in the current system.
 - b. staff papers summarizing existing laws pertaining to domestic relations (marriage, divorce, custody, spousal support, etc.) and, as possible, the costs of the existing system;
 - c. presentations/panels/staff material on other processes that are used in other jurisdictions.
2. Identify issues: January 2014 - April 2014. Study activities during this stage will include a review of information presented to date and possibly papers or additional presentations on topics selected by the LJIC or on which the committee members require more information. The focus of activities during this stage will be identification by the LJIC of problems it would like to address through further analysis or possibly legislation. This stage would include a more in-depth review of family law alternatives used in jurisdictions, as selected by LJIC members as alternatives of interest. This stage would likely also include feedback from existing stakeholders in the Montana system to gather their views of the alternatives selected for in-depth review and try to establish any anticipated costs of establishing or maintaining a alternative system for domestic relations cases. This stage could also include a discussion of ways to measure the efficacy of alternatives in order to compare them to the existing system.
3. Review and decide on legislative options: April 2014 - August 2014. After compiling background information, identifying possible alternatives, and researching cost and implementation options, the LJIC will discuss if and how it wants to address identified problems through legislation or other methods.

The table on the following page provides a listing of possible or anticipated study activities and resources, as well as tentative dates for the activities. It also includes an estimate of the amount of LJIC meeting time that each activity might entail. The time estimates in the table are based on the assumption that the LJIC will adopt the proposal in the Draft Work Plan to devote approximately 20% of its meeting time (or 14.5 hours) to the SJR 22 study. If the LJIC chooses a different allocation of time or a different level of involvement in the study, the activities would be revised accordingly by the presiding officer and staff.

Action Item: Review, discuss, and revise/adopt the proposed study activities and allocation of committee time.

Study Process	Source	Actions	Meeting Date	Committee Time
(1) Review existing procedures for resolving family law disputes and resources available to litigants	Staff research, stakeholder input	Staff research materials; panel presentation	September 2013	2 hours
(2) Identify problems with existing procedures, including costs, as possible	Stakeholder input, staff research	Panel presentation(s); staff research materials; public comment	September/ December 2013	2 hours
(3) Identify and examine alternative systems, processes, or programs used by other jurisdictions or other solutions	Staff research, stakeholder input	Staff materials; panel presentation(s); public comment	February 2014	3.5 hours
(4) Examine policy and cost implications of possible alternatives	Staff research, stakeholder input	Presentations; public comments; staff materials; committee discussion	April 2014	3 hours
(5) Develop recommendations and, if requested, bill drafts for the 2015 Legislature	Committee members	Committee work sessions; public comment	June through August 2014	4 hours
			Total	14.5

SENATE JOINT RESOLUTION 22

SENATE JOINT RESOLUTION NO. 22

INTRODUCED BY L. JENT

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY EVALUATING CURRENT COURT PROCEDURES IN FAMILY LAW CASES AND IDENTIFYING ALTERNATIVE SOLUTIONS.

WHEREAS, Montana's district courts experienced a record number of filings in 2012, exceeding 50,000 new case filings statewide for the first time in history; and

WHEREAS, more than one in five of all cases filed in the district courts are domestic relations and family law cases, approximately 60% of which, more than 6,500 cases in 2012, have at least one party who is not represented by counsel; and

WHEREAS, the high percentage of the district courts' caseload and the attention the various issues in these filings require have the dual effect of overwhelming the bench and depriving litigants of the prompt, careful consideration they deserve; and

WHEREAS, children and families suffer in contested parenting cases, where the win-lose adversarial court system often escalates family conflict instead of working to find solutions that will create a healthy environment in which children may grow up without being caught in the middle of their parents' disagreements; and

WHEREAS, other states have created alternatives for handling family law matters, including early case management and early neutral evaluation programs, administrative law models that allow fact-gathering and processing of family cases prior to involvement by the court, and other alternative dispute resolution processes; and

WHEREAS, alternative dispute resolution methods would assist parties in resolving matters before significant financial and emotional resources are expended on litigation and would help avoid lengthy and expensive court battles, while at the same time freeing up the district courts to spend more time on the other areas of their growing caseloads.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) evaluate the cost and effectiveness of Montana's current court processes in addressing domestic relations matters;

(2) research family law models and approaches, legislative and otherwise, being used in other states; and

(3) identify measures that will help improve the administration of justice and promote the nonadversarial resolution of family law disputes.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.