

1 HOUSE JOINT RESOLUTION NO. 32

2 INTRODUCED BY N. BIXBY

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF
 5 MONTANA REQUESTING A PERFORMANCE AUDIT OF THE CHILD PROTECTIVE SERVICES SYSTEM BY
 6 THE LEGISLATIVE AUDIT DIVISION.

7

8 WHEREAS, it is the policy of the State of Montana, as stated in section 41-3-101, MCA, to protect
 9 family unity, to provide for the protection of children who may be adversely affected by those responsible
 10 for their care and protection, and to ensure that whenever removal from a home is necessary, the child
 11 is entitled to maintain ethnic, cultural, and religious heritage, whenever appropriate; and

12 WHEREAS, Congress enacted the Indian Child Welfare Act of 1978 (ICWA) to prevent the breakup
 13 of Indian families and to give Indian tribes a role in matters concerning custody of Indian children, and the
 14 ICWA must be recognized in child custody proceedings, such as foster care placement, termination of
 15 parental rights, and adoptive or preadoptive placements, that involve Indian children; and

16 WHEREAS, although section 41-3-109, MCA, states that proceedings that involve an Indian child
 17 are subject to the ICWA, there are numerous exceptions in the ICWA that allow exclusive or concurrent
 18 jurisdiction of either the state or the Indian tribe, dependent on domicile, custody, parental petition, and
 19 "good cause", which may lead to uneven interpretation and application of the law and occurrences in
 20 which the Indian tribes are denied jurisdiction; and

21 WHEREAS, the federal Adoption and Safe Families Act of 1997 was also enacted to provide for
 22 child safety and for an accelerated resolution of issues to facilitate fewer temporary placements and to
 23 lead, ideally, to permanent placements for children in need of foster care and protective services; and

24 ~~WHEREAS, A PERFORMANCE AUDIT OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES WILL BE~~
 25 ~~CONDUCTED BY THE FEDERAL GOVERNMENT IN 2002 TO DETERMINE THE DEPARTMENT'S COMPLIANCE WITH THE FEDERAL~~
 26 ~~ADOPTION AND SAFE FAMILIES ACT OF 1997 AND IT WILL BE DIFFICULT FOR THE DEPARTMENT TO EFFECTIVELY~~
 27 ~~PARTICIPATE IN TWO PERFORMANCE AUDITS AT THE SAME TIME; AND~~

28 WHEREAS, the application of the power of the state to intervene in families is a difficult judgment
 29 call that the Department of Public Health and Human Services is required to make in order to protect
 30 children and families; and

1 WHEREAS, the social workers who make those judgment calls do so within the context of a local
 2 community with law enforcement, the County Attorney's office, and the court, but those decisions must
 3 be reviewed to ensure that the law is being applied equally statewide; and

4 WHEREAS, significant concerns have been raised regarding the operation and inadequate funding
 5 ~~AND THE RESULTING INADEQUATE RESOURCES~~ of the child protective services system, and in response, the
 6 Legislature considers that it is appropriate to call for a performance audit by the Legislative Audit Division.

7

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

10 That the Legislative Audit Committee prioritize a performance audit of child protective services in
 11 the Department of Public Health and Human Services, including but not limited to:

12 (1) the provision of child protective services across the state in regard to family-based services,
 13 intervention and treatment, investigations of abuse and neglect reports, out-of-home placements, especially
 14 with a noncustodial parent or kin, ~~THE EXTENT TO WHICH THOSE PRACTICES SUFFER FROM A LACK OF FINANCIAL AND~~
 15 ~~OTHER RESOURCES,~~ and the extent to which those practices are uniform statewide;

16 (2) policies and procedures regarding the application of the Indian Child Welfare Act of 1978
 17 across the state and especially in the urban jurisdictions, many of which are near Indian reservations and
 18 all of which may involve Indian children. The audit may include a review of the Guidelines for State Courts
 19 for Indian child custody proceedings of the Bureau of Indian Affairs that the Montana Supreme Court has
 20 held are applicable and should be considered in ICWA cases.

21 (3) the extent to which the Department's policies and procedures, such as family group
 22 conferencing and foster care home recruiting, reflect cultural needs and are conducted in a manner that
 23 considers cultural practices and language;

24 (4) the extent to which the training of social workers, County Attorneys, and courts is relevant
 25 regarding the state and federal provisions pertaining to child protective services; and

26 (5) the provision of recommendations regarding management, personnel, and training needs of the
 27 Department for child protective services.

28 ~~BE IT FURTHER RESOLVED, THAT ANY AUDIT OF CHILD PROTECTIVE SERVICES PROVIDED BY THE DEPARTMENT~~
 29 ~~OF PUBLIC HEALTH AND HUMAN SERVICES SHOULD INCLUDE A STUDY OF THE RELATIONSHIP BETWEEN THE STATE AND~~
 30 ~~TRIBAL COURTS IN THE ENFORCEMENT BY THOSE COURTS OF THE RIGHTS OF CHILDREN AND THEIR PARENTS OR GUARDIANS~~

1 ~~AND THE RESPONSIBILITIES OF THE DEPARTMENT IN PROVIDING CHILD PROTECTIVE SERVICES.~~
2 ~~———— BE IT FURTHER RESOLVED, THAT THE LEGISLATIVE AUDIT COMMITTEE SEEK TO HAVE A MEMBER OF THE~~
3 ~~LEGISLATIVE AUDIT DIVISION STAFF PARTICIPATE IN THE FEDERAL AUDIT TO BE CONDUCTED IN 2002, THROUGH~~
4 ~~MEMBERSHIP ON THE TEAM OF AUDITORS OR BY ANOTHER MEANS.~~
5 ~~———— BE IT FURTHER RESOLVED, THAT THE LEGISLATIVE AUDIT COMMITTEE SCHEDULE ANY STATE PERFORMANCE~~
6 ~~AUDIT OF THE CHILD PROTECTIVE SERVICES PROVIDED BY THE DEPARTMENT AT A TIME DIFFERENT FROM AND NOT IN~~
7 ~~CONFLICT WITH THE AUDIT TO BE CONDUCTED BY THE FEDERAL GOVERNMENT IN 2002.~~

8 - END -