

## HOUSE JOINT RESOLUTION NO. 3

INTRODUCED BY B. LAWSON

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM COMMITTEE STUDY TO EXAMINE CHILD ABUSE AND NEGLECT PROCEEDINGS IN ORDER TO DETERMINE HOW TO PROVIDE REPRESENTATION FOR INDIGENT FAMILIES AND TO DETERMINE THE APPROPRIATE EARLIEST OPPORTUNITY.

WHEREAS, the Montana Family Policy Act states in section 41-7-102, MCA, that it is the policy of the State of Montana to support and preserve the family as the single most powerful influence for ensuring the healthy social development and mental and physical well-being of Montana's children; and

WHEREAS, in child protective services, it is also the policy of the State of Montana set out in section 41-3-101, MCA, to ensure that all youth are afforded an adequate physical and emotional environment to promote normal development, to compel in proper cases the parent or guardian to perform the parent's or guardian's moral and legal obligations, to achieve these purposes in a family environment and to preserve the unity and welfare of the family whenever possible, to ensure that there is no forced removal of a child from a family based on unsubstantiated allegations, to provide for protection of children, and to require the interview of parents and an opportunity for parents to appear before a judge and have statements presented before a decision is rendered; and

WHEREAS, there is no statutory obligation to appoint legal counsel for indigent parents prior to a permanent custody proceeding, including termination of parental rights, but the Montana Supreme Court has also stated that "there are also no guidelines precluding or making inappropriate the appointment of counsel for indigent parents in child protective proceedings prior to termination proceedings" (In re A.F.-C., 2001 MT 283, 307 Mont. 358, 37 P.3d 724 (2001)); and

WHEREAS, there are significant due process, philosophical, and resource issues involved in the determination of at what point parents require counsel in proceedings involving child protection and potential termination of parental rights; and

WHEREAS, the Legislative Audit Division recently conducted a performance audit of child protective services and, although it did not make a specific recommendation in this area, found that there is statewide variation in whether indigent parents receive legal representation in child abuse and neglect proceedings prior

to termination of parental rights (October 2002 report, page 53); and

WHEREAS, the Children, Families, Health, and Human Services Interim Committee recognizes these issues as worthy of study to determine whether legal counsel or other forms of advocacy or representation, such as family advocates or ombudsmen, should be appointed earlier in child protective services proceedings in order to provide guidance through a difficult process and to protect parents' rights.

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 examine child abuse and neglect proceedings in order to determine how to best provide representation to families at an appropriate time in the child protective services proceedings to further the goals of balancing the best interests of the child, the rights of parents, and the possibility of reunification of the family and to provide prevention and early intervention strategies as early in the process as possible.

BE IT FURTHER RESOLVED, that the Legislature recognizes that the issue of representation of families in child abuse and neglect proceedings may also be relevant to other court proceedings that involve the intervention of one or more public agencies or require public services for children and families, such as Youth Court and civil mental health commitment proceedings.

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, 2004.

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 59th Legislature.

- END -