

PRELIMINARY STUDY OUTLINE

OVERVIEW

Study: HJ3 Interim Study Poll Rank: ____

Short Title: Study child abuse and neglect proceeding representation for indigent parents

Staff Recommendation: Children and Families Interim Study

PRELIMINARY ANALYSIS

Issue(s) as listed in legislation: (1) 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 ;

(2) 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.

Preliminary study approach: Background research on:

(1) the process involved in a child abuse and neglect case, especially the critical points in the process where the rights of the children and the rights of the parents may conflict; statutory (state and federal including Adoptive and Safe Families Act, Indian Child Welfare Act) and other legal rights and obligations of parties, including representation, family policy; programs in judiciary (court assessment program), pro bono; best practices.

(2) legal issues of due process and representation or advocacy of the various parties (i.e. child (Citizen Review Boards, Foster Care Review Committees, Court-Appointed Special Advocates (CASA), Guardians Ad Litem (GAL); state (Child Protective Services - CPS), District Court prosecution; parents)

(3) philosophical issues: parents' rights, childrens' rights, state's rights, parens partria;

(4) resource issues: family, child protective services, state, county, and judiciary resources for public defense;

(5) recent legislative audit findings, court decisions, Equal Justice Project of the State Bar, and successful and unsuccessful legislation (changes to CPS, funding reduction for citizen review board, defeat of state Public Defender program and jury trial legislation) will also provide background information.

Deliverables; end products: Research report; issues and options; suggested legislation.

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Role for LFD or LAD staff? xxx Yes _____ No

LFD - reference to budget changes for child protective services, citizen review boards, CASA and GAL programs, and district court expenses for indigent defense.

LAD - Recent audits on the child protective service system can provide valuable background information on how representation may assist in or delay the proceedings and effects on potential prevention or early intervention. to reduce demands/impact on CPS system.

Estimated LSD staff time: 120-250 hours

Other comments:

Progress and Final Reports should be forwarded to the Law and Justice Interim Committee to ensure cross-over familiarity and coordination with judicial issues.

Originally prepared in May 2003 for the Legislative Council by Susan Byorth Fox.

August 2003 Update:

The Law and Justice Interim Committee has dedicated 40% of its time this interim to the state assumption of indigent defense issue. It is critical for the two interim committees to work together if a recommendation will be forthcoming and a joint interim meeting could provide a good opportunity to discuss the related issues.

Senate Bill No. 218 was defeated in the 2003 Legislature. It is of importance to this Committee and this study as in the final draft of the bill, it was proposing a criminal and appellate public defender system which would NOT include representation for the civil process involved in the termination of parental rights, or other civil proceedings, such as commitments of the mentally ill or juvenile justice proceedings which may be interrelated with families involved in child abuse and neglect proceedings.

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