

## SENATE BILL NO. 147

INTRODUCED BY T. FACEY

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A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING ATTORNEYS FOR THE OFFICE OF STATE PUBLIC DEFENDER UNHINDERED ACCESS TO CONSULT WITH AND ADVISE DETAINEES; AND AMENDING SECTION 47-1-104, MCA."

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

**Section 1.** Section 47-1-104, MCA, is amended to read:

**"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense.** (1) There is a statewide public defender system, which must deliver public defender services in all courts in this state. The system is supervised by the commission and administered by the office.

(2) The commission shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The commission may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) ~~Beginning July 1, 2006, when~~ When a court orders the office to assign counsel, the office shall immediately assign a public defender qualified to provide the required services. The commission shall establish protocols to ensure that the office makes appropriate assignments in a timely manner.

(4) Before the assignment of a public defender, public defenders or their representatives must be allowed access to jails to meet with detainees prior to the detainees' court appearances in order to advise detainees of their rights and to consult on the issues of bail and pending criminal charges. Any person denying the public defender access may be subject to the penalties provided for in 37-61-418.

~~(4)(5) Beginning July 1, 2006, a~~ A court may order the office to assign counsel under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of

- 1 incarceration, as provided in 46-8-101;
- 2 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in  
3 40-6-119;
- 4 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any  
5 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child  
6 Welfare Act, as provided in 41-3-425;
- 7 (iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;
- 8 (v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;
- 9 (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;
- 10 (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally  
11 disabled person to a residential facility, as provided in 53-20-112;
- 12 (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in  
13 53-21-116;
- 14 (ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as  
15 provided in 53-24-302; and
- 16 (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.
- 17 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless  
18 of the person's financial ability to retain private counsel, as follows:
- 19 (i) as provided for in 41-3-425;
- 20 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in  
21 need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution  
22 Act, as provided in 41-5-1607;
- 23 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles,  
24 as provided in 41-6-101;
- 25 (iv) for a minor who petitions for a waiver of parental notification requirements under the Parental Notice  
26 of Abortion Act, as provided in 50-20-212;
- 27 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled  
28 person to a residential facility, as provided in 53-20-112;
- 29 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;
- 30 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a

1 proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;  
2 (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental  
3 disorder of the ward, as provided in 72-5-322; and  
4 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection ~~(4)~~ (5).  
5 ~~(5)(6)~~ (a) Except as provided in subsection ~~(5)(b)~~ (6)(b), a public defender may not be assigned to act  
6 as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act,  
7 Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.  
8 (b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender  
9 services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a  
10 proceeding described in subsection ~~(5)(a)~~ (6)(a) if the appointment is separate from the attorney's service for the  
11 statewide public defender system and does not result in a conflict of interest."

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