

HOUSE BILL NO. 107

INTRODUCED BY R. LYNCH

BY REQUEST OF THE PUBLIC DEFENDER COMMISSION

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING COUNSEL ASSIGNMENTS IN
6 ABUSE OR NEGLECT PROCEEDINGS; REQUIRING A DETERMINATION OF ELIGIBILITY FOR COUNSEL
7 ASSIGNMENTS; PROVIDING FOR COUNSEL ASSIGNMENTS AT THE COURT'S EXPENSE IN CERTAIN
8 CASES; PROVIDING A COORDINATION INSTRUCTION REGARDING APPROPRIATIONS FOR COUNSEL
9 ASSIGNMENTS BY THE JUDICIARY; AMENDING SECTION 41-3-425, MCA; AND PROVIDING AN
10 EFFECTIVE DATE."

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

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14 **Section 1.** Section 41-3-425, MCA, is amended to read:

15 **"41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the right
16 to counsel in all proceedings held pursuant to the petition.

17 (2) Except as provided in ~~subsection (3)~~ subsections (3) and (4), the court shall immediately appoint or
18 ~~have counsel assigned~~ the office of state public defender to assign counsel for:

19 (a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal,
20 placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility pursuant to
21 47-1-111;

22 (b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a
23 guardian ad litem is not appointed for the child or youth; and

24 (c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

25 (3) When appropriate, the court may appoint or ~~have counsel assigned for:~~

26 ~~_____ (a) a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition~~
27 ~~_____ filed pursuant to 41-3-422;~~

28 ~~_____ (b) the office of state public defender to assign counsel for any child or youth involved in a proceeding~~
29 ~~_____ under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.~~

30 (4) ~~The court's action pursuant to subsection (2) or (3) must be to order the office of state public~~



1 ~~defender, provided for in 47-1-201, to immediately assign counsel pursuant to the Montana Public Defender Act,~~
2 ~~Title 47, chapter 1, pending a determination of eligibility pursuant to 47-1-111~~ When appropriate and in
3 accordance with judicial branch policy, the court may assign counsel at the court's expense for a guardian ad
4 litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422."

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6 COORDINATION SECTION. **Section 2. Coordination instruction.** If both House Bill No. 2 and [this
7 act] are passed and approved and at least \$40,000 is not appropriated to the judiciary for the purpose of funding
8 counsel assignments pursuant to 41-3-425(4) then:

9 (1) the general fund appropriation for the office of state public defender in House Bill No. 2 is decreased
10 by \$40,000 for the biennium ending June 30, 2015; and

11 (2) the general fund appropriation for the judiciary for the purpose of funding counsel assignments
12 pursuant to 41-3-425(4) is increased by \$40,000 for the biennium ending June 30, 2015.

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14 NEW SECTION. **Section 3. Effective date.** [This act] is effective July 1, 2013.

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