



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

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

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

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

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

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

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

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

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

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

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

(4) ~~The court's action pursuant to subsection (2) or (3) must be to order the office of state public defender, provided for in 47-1-201, to immediately assign counsel pursuant to the Montana Public Defender Act,~~

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

**Section 2. Coordination instruction.** If both House Bill No. 2 and [this act] are passed and approved and at least \$40,000 is not appropriated for each year of the biennium ending June 30, 2015, to the judiciary for the purpose of funding counsel assignments pursuant to 41-3-425(4) then:

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

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

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

- END -

I hereby certify that the within bill,  
HB 0107, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2013.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2013.

HOUSE BILL NO. 107  
INTRODUCED BY R. LYNCH  
BY REQUEST OF THE PUBLIC DEFENDER COMMISSION

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