

HOUSE BILL NO. 504

INTRODUCED BY K. DUDIK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING THE APPOINTMENT OR
5 ASSIGNMENT OF COUNSEL FOR CHILDREN IN ABUSE AND NEGLECT CASES; PROHIBITING THE
6 ASSIGNMENT OF COUNSEL FROM THE OFFICE OF STATE PUBLIC DEFENDER OR COUNSEL
7 REPRESENTING A CHILD'S PARENT IN THE SAME OR A RELATED PROCEEDING; REQUIRING THE
8 OFFICE OF STATE PUBLIC DEFENDER TO CONTRACT WITH AN ENTITY FOR LEGAL SERVICES;
9 AMENDING SECTIONS 41-3-425 AND 47-1-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
10 AND AN APPLICABILITY 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), the court shall immediately appoint or have counsel assigned
18 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;

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

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

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

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

27 (b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a
28 guardian ad litem is appointed for the child or youth.

29 (4) ~~The~~ Except as provided in subsection (5), the court's action pursuant to subsection (2) or (3) must
30 be to order the office of state public defender, provided for in 47-1-201, to immediately assign counsel pursuant

1 to the Montana Public Defender Act, Title 47, chapter 1, pending a determination of eligibility pursuant to
2 47-1-111.

3 (5) In accordance with 47-1-216, the office of state public defender shall contract with a separate entity
4 to provide legal representation to children in proceedings under 41-3-422 that is independent from the office of
5 state public defender and that is not associated with counsel representing a parent in the same or a related
6 proceeding under Title 41, chapter 3. The court's action pursuant to this subsection must be to immediately order
7 the entity to assign counsel."

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9 **Section 2.** Section 47-1-104, MCA, is amended to read:

10 **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public**
11 **expense.** (1) There is a statewide public defender system, which is required to deliver public defender services
12 in all courts in this state. The system is supervised by the commission and administered by the office.

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

18 (3) When a court orders the office or the office of appellate defender to assign counsel, the appropriate
19 office shall immediately assign a public defender qualified to provide the required services. The commission shall
20 establish protocols to ensure that the offices make appropriate assignments in a timely manner.

21 (4) A court may order an office to assign counsel under this chapter in the following cases:

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

24 (i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of
25 incarceration, as provided in 46-8-101;

26 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in
27 40-6-119;

28 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any
29 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child
30 Welfare Act, as provided in 41-3-425;

- 1 (iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;
- 2 (v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;
- 3 (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;
- 4 (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally
5 disabled person to a residential facility, as provided in 53-20-112;
- 6 (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in
7 53-21-116;
- 8 (ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as
9 provided in 53-24-302; and
- 10 (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.
- 11 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless
12 of the person's financial ability to retain private counsel, as follows:
- 13 (i) as provided for in 41-3-425, except under subsection (5) of that section;
- 14 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in
15 need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution
16 Act, as provided in 41-5-1607;
- 17 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles,
18 as provided in 41-6-101;
- 19 (iv) for a minor who petitions for a waiver of parental notification requirements under the Parental Notice
20 of Abortion Act, as provided in 50-20-232;
- 21 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled
22 person to a residential facility, as provided in 53-20-112;
- 23 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;
- 24 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a
25 proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;
- 26 (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental
27 disorder of the ward, as provided in 72-5-322; and
- 28 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).
- 29 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a
30 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title

1 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

2 (b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender
3 services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a
4 proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the
5 statewide public defender system and does not result in a conflict of interest."

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7 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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9 NEW SECTION. **Section 4. Applicability.** [This act] applies to appointments of counsel made on or
10 after October 1, 2013.

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