

Amendment - 2nd Reading/2nd House-tan - Requested by: Mary Caferro - (H) Committee of the Whole

- 2023

68th Legislature 2023

Drafter: Madelyn Krezowski, (406) 444-6857

SB0148.002.001

1 SENATE BILL NO. 148

2 INTRODUCED BY D. LENZ

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LEGAL REPRESENTATION FOR CHILDREN IN
5 CHILD ABUSE AND NEGLECT CASES; AND AMENDING SECTION 41-3-425, MCA."

6

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

8

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

10 **"41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the
11 right to counsel in all proceedings held pursuant to the petition.

12 (2) Except as provided in subsections (3) through (5) and (4) ~~THROUGH (5) and (4)~~, the court shall
13 immediately appoint the office of state public defender to assign counsel for:

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

17 (b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 ~~when a~~
18 ~~guardian ad litem is not appointed for the child or youth~~ ~~WHEN A GUARDIAN AD LITEM IS NOT APPOINTED FOR THE~~
19 ~~CHILD OR YOUTH~~; and

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

21 (3) ~~When appropriate, the court may appoint the office of state public defender to assign counsel for~~
22 ~~any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem~~
23 ~~is appointed for the child or youth.~~

24 ~~(3) THE COURT SHALL CONSIDER APPOINTMENT OF THE OFFICE OF STATE PUBLIC DEFENDER TO ASSIGN~~
25 ~~COUNSEL FOR ANY CHILD OR YOUTH INVOLVED IN A PROCEEDING UNDER A PETITION FILED PURSUANT TO 41-3-422~~
26 ~~WHEN A GUARDIAN AD LITEM IS APPOINTED FOR THE CHILD OR YOUTH IF THE APPOINTED GUARDIAN AD LITEM IS NOT AN~~
27 ~~ATTORNEY. IF THE COURT DOES NOT APPOINT THE OFFICE OF STATE PUBLIC DEFENDER TO ASSIGN COUNSEL WHEN THE~~

Amendment - 2nd Reading/2nd House-tan - Requested by: Mary Caferro - (H) Committee of the Whole

- 2023

68th Legislature 2023

Drafter: Madelyn Krezowski, (406) 444-6857

SB0148.002.001

1 ~~APPOINTED GUARDIAN AD LITEM IS NOT AN ATTORNEY, IT SHALL ENTER A WRITTEN ORDER WITH THE BASIS FOR THE~~

2 ~~DECISION:~~

3 ~~(4)(3)(4)(3)~~ When appropriate and in accordance with judicial branch policy, the court may assign
4 counsel at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a
5 proceeding under a petition filed pursuant to 41-3-422.

6 ~~(5)(4)(5)(4)~~ Except as provided in the federal Indian Child Welfare Act, a court may not appoint a
7 public defender to a putative father, as defined in 42-2-201, of a child or youth in a removal, placement, or
8 termination proceeding pursuant to 41-3-422 until:

- 9 (a) the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and
10 (b) the putative father makes a request to the court in writing to appoint the office of state public
11 defender to assign counsel."

12
13 ~~COORDINATION SECTION. SECTION 2. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 37 AND~~
14 ~~[THIS ACT] ARE PASSED AND APPROVED AND IF BOTH INCLUDE A SECTION THAT AMENDS 41-3-425, THEN THE SECTION~~
15 ~~AMENDING 41-3-425 IN HOUSE BILL NO. 37 IS VOID.~~

16 - END -