

1 HOUSE BILL NO. 111
2 INTRODUCED BY J. ETCHART
3 BY REQUEST OF THE STATE PUBLIC DEFENDER
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE ASSIGNMENT OF PUBLIC
6 DEFENDERS; AND AMENDING SECTION 47-1-104, MCA."
7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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10 Section 1. Section 47-1-104, MCA, is amended to read:

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

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

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

22 (4) A court may order assignment of a public defender under this chapter in the following cases:

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

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

28 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as

1 provided in 40-6-119;

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

5 ~~(iv)(iii)~~ for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

6 ~~(v)(iv)~~ for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

7 ~~(vi)(v)~~ for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

8 ~~(vii)(vi)~~ for a parent or guardian in a proceeding for the involuntary commitment of a developmentally
9 disabled person to a residential facility, as provided in 53-20-112; and

10 ~~(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in~~
11 ~~53-21-116 ;~~

12 ~~(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as~~
13 ~~provided in 53-24-302 ; and~~

14 ~~(x)(vii)~~ for a witness in a criminal grand jury proceeding, as provided in 46-4-304. ;

15 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense
16 regardless of the person's financial ability to retain private counsel, as follows:

17 (i) as provided for in 41-3-425;

18 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent
19 or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction
20 Prosecution Act, as provided in 41-5-1607;

21 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on
22 Juveniles, as provided in 41-6-101;

23 (iv) for a minor who petitions for a waiver of parental consent requirements under the Parental
24 Consent for Abortion Act of 2013, as provided in 50-20-509;

25 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled
26 person to a residential facility, as provided in 53-20-112;

27 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

28 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in

1 a 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
3 mental disorder of the ward, as provided in 72-5-322; ~~and~~

4 (ix) 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 to 41-3-422 and as required under the federal Indian
6 Child Welfare Act, as provided in 41-3-425;

7 (x) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided
8 in 53-21-116; and

9 (xi) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as
10 provided in 53-24-302; and

11 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

12 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a
13 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title
14 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

15 (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public
16 defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad
17 litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service
18 for the statewide public defender system and does not result in a conflict of interest."

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20 **NEW SECTION. Section 2. Notification to tribal governments.** The secretary of state shall send a
21 copy of [this act] to each federally recognized tribal government in Montana.

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