



AN ACT REVISING LAWS RELATED TO THE ASSIGNMENT OF PUBLIC DEFENDERS; AND AMENDING SECTION 47-1-104, MCA.

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

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

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

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

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

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

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

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

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

provided in 40-6-119;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; ~~and~~

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

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

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

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

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

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

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

- END -

I hereby certify that the within bill,
HB 111, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2023.

President of the Senate

Signed this _____ day
of _____, 2023.

HOUSE BILL NO. 111

INTRODUCED BY J. ETCHART

BY REQUEST OF THE STATE PUBLIC DEFENDER

AN ACT REVISING LAWS RELATED TO THE ASSIGNMENT OF PUBLIC DEFENDERS; AND AMENDING
SECTION 47-1-104, MCA.