

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."

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

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

1 DECISION.

2 ~~(4)(3)(4)~~ When appropriate and in accordance with judicial branch policy, the court may assign
3 counsel at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a
4 proceeding under a petition filed pursuant to 41-3-422.

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

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

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

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