

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~~  
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)(3)~~ 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)(4)~~ 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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