

1 HOUSE BILL NO. 575

2 INTRODUCED BY P. STRAND

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE PROCEEDINGS IN WHICH A
5 PUBLIC DEFENDER MAY BE ASSIGNED; AUTHORIZING THAT A COURT MAY ASSIGN A PUBLIC
6 DEFENDER FOR A PARENT IN A PROCEEDING TO INVOLUNTARILY TERMINATE THE PARENT'S
7 PARENTAL RIGHTS; PROVIDING THAT A COURT MAY ORDER ASSIGNMENT OF A PUBLIC DEFENDER
8 TO SERVE AS A MEMBER OF A TREATMENT COURT TEAM; AMENDING SECTION 47-1-104, MCA; AND
9 PROVIDING AN EFFECTIVE DATE."

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

12
13 **Section 1.** Section 47-1-104, MCA, is amended to read:

14 **"47-1-104. (Temporary) Statewide system -- structure and scope of services -- assignment of**
15 **counsel at public expense.** (1) There is a statewide public defender system, which is required to deliver public
16 defender services in all courts in this state. The system is supervised by the director.

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

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

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

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

- 1 (i) for a person charged with a felony or charged with a misdemeanor for which there is a
2 possibility of incarceration, as provided in 46-8-101;
- 3 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as
4 provided in 40-6-119;
- 5 (iii) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;
- 6 (iv) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;
- 7 (v) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;
- 8 (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 (vii) for a witness in a criminal grand jury proceeding, as provided in 46-4-304;
- 11 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense
12 regardless of the person's financial ability to retain private counsel, as follows:
- 13 (i) as provided for in 41-3-425;
- 14 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent
15 or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction
16 Prosecution Act, as provided in 41-5-1607;
- 17 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on
18 Juveniles, as provided in 41-6-101;
- 19 (iv) for a minor who petitions for a waiver of parental consent requirements under the Parental
20 Consent for Abortion Act of 2013, as provided in 50-20-509;
- 21 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled
22 person to a residential facility, as provided in 53-20-112;
- 23 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;
- 24 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in
25 a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;
- 26 (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a
27 mental disorder of the ward, as provided in 72-5-322;
- 28 (ix) for a parent, guardian, or other person with physical or legal custody of a child or youth in any

1 removal, placement, or termination proceeding pursuant to 41-3-422 and as required under the federal Indian
2 Child Welfare Act and 41-3-1316, as provided in 41-3-425;

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

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

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

8 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a
9 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title
10 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

11 (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public
12 defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad
13 litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service
14 for the statewide public defender system and does not result in a conflict of interest. (Terminates June 30,
15 2025--sec. 55, Ch. 716, L. 2023.)

16 **47-1-104. (Effective July 1, 2025) Statewide system -- structure and scope of services --**
17 **assignment of counsel at public expense.** (1) There is a statewide public defender system, which is required
18 to deliver public defender services in all courts in this state. The system is supervised by the director.

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

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

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

28 (a) in cases in which a person is entitled to assistance of counsel at public expense because of

1 financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as
2 follows:

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

5 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as
6 provided in 40-6-119;

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

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

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

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

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

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

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

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

20 (xi) for a parent in a proceeding to involuntarily terminate the parent's parental rights pursuant to
21 42-2-607;

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

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

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

28 (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

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

(5) A court may also order assignment of a public defender to serve as a member of a treatment court team established pursuant to 46-1-1104 or 46-1-1204.

~~(5)(6)~~ (a) Except as provided in subsection ~~(5)(b)~~ (6)(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)~~ (6)(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."

NEW SECTION. Section 2. Effective date. [This act] is effective July 1, 2025.

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