



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

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. (Temporary) 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 an applicant for sentence review pursuant to Title 46, chapter 18, part 9;
 - (iv) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;
 - (v) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;
 - (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
 - (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;

(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 and 41-3-1316, 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. (Terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)

47-1-104. (Effective July 1, 2025) 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) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;
- (v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;
- (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;
- (vii) 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;
- (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) for a witness in a criminal grand jury proceeding, as provided in 46-4-304; and
- (xi) for a parent in a proceeding to involuntarily terminate the parent's parental rights pursuant to 42-2-607;

(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
- (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."

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

- END -

I hereby certify that the within bill,
HB 575, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2025.

President of the Senate

Signed this _____ day
of _____, 2025.

HOUSE BILL NO. 575

INTRODUCED BY P. STRAND

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