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HOUSE BILL NO. 317

INTRODUCED BY J. WINDY BOY, M. WEATHERWAX, C. KEOGH, D. HAWK, E. KERR-CARPENTER, A. BUCKLEY, K. SULLIVAN, K. KORTUM, T. FRANCE, E. STAFMAN, M. CAFERRO, M. THANE, F. SMITH, M. FOX, S. MORIGEAU, J. ETCHART, K. ABBOTT, P. TUSS, S. STEWART PEREGOY, B. CARTER, Z. ZEPHYR, M. ROMANO, L. SMITH, D. BAUM, E. MATTHEWS, S. HOWELL

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA INDIAN CHILD WELFARE ACT; PROVIDING REQUIREMENTS FOR DETERMINING INDIAN STATUS AND INDIAN TRIBE; ESTABLISHING REQUIREMENTS FOR COURT PROCEEDINGS, EVIDENCE, AND CONSENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 40-6-405, 40-6-407, 40-6-413, 40-6-414, 40-6-1001, 40-7-135, 41-3-102, 41-3-103, 41-3-109, 41-3-128, 41-3-205, 41-3-301, 41-3-306, 41-3-307, 41-3-422, 41-3-423, 41-3-425, 41-3-427, 41-3-432, 41-3-437, 41-3-444, 41-3-609, 42-2-102, 42-2-604, 42-4-102, 42-4-103, 42-4-203, 42-4-209, 42-5-101, 42-5-107, 47-1-104, AND 52-2-117, MCA; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 20 19] may be cited as the "Montana Indian Child Welfare Act".

NEW SECTION. **Section 2. Legislative findings -- purpose.** (1) The legislature recognizes that in possibly no other area of concurrent tribal and state law is it more important that tribal sovereignty be respected than in an area as socially and culturally determinative as family relationships. The legislature finds that the state is committed to protecting the essential tribal relations and best interests of Indian children by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the child, or the interests of the child's tribe. Whenever out-of-home placement of an Indian child is necessary in a proceeding subject to the terms of the federal Indian Child Welfare Act and [sections 1 through 20 19], the best interests of the Indian child may be served by placing the Indian child in accordance with the placement priorities expressed in [sections 1 through 20 19].

1 NEW SECTION. Section 53. Codification instruction. [Sections 1 through 20 19] are intended to be  
2 codified as an integral part of Title 41, chapter 3, and the provisions of Title 41, chapter 3, apply to [sections 1  
3 through 20 19].  
4

5 COORDINATION SECTION. Section 54. Coordination instruction. If both House Bill No. 111 and  
6 [this act] are passed and approved and if both contain a section that amends 47-1-104, then the sections  
7 amending 47-1-104 are void and 47-1-104 must be amended as follows:

8 **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at**  
9 **public expense.** (1) There is a statewide public defender system, which is required to deliver public defender  
10 services in all courts in this state. The system is supervised by the director.

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

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

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

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

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

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

27 ~~(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any~~  
28 ~~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~~

1            (ix) for a parent, guardian, or other person with physical or legal custody of a child or youth in any  
2 removal, placement, or termination proceeding pursuant to 41-3-422 and as required under the federal Indian  
3 Child Welfare Act and [section 10], as provided in 41-3-425;  
4            (x) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided  
5 in 53-21-116; and  
6            (xi) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as  
7 provided in 53-24-302; and  
8            (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).  
9            (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a  
10 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title  
11 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.  
12            (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public  
13 defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad  
14 litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service  
15 for the statewide public defender system and does not result in a conflict of interest."

16  
17            **NEW SECTION. Section 55. Effective dates.** (1) Except as provided in subsection (2), [this act] is  
18 effective July 1, 2023.

19            (2) [Section 33 32] and this section are effective on passage and approval.

20            - END -