

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1045

Introduced by

Legislative Council

(Judiciary A Committee)

1 A BILL for an Act to amend and reenact sections 14-07.1-05.1, 14-09-06.3, 14-09-06.4,
2 14-17-15, 25-03.1-13, and 25-03.3-09 of the North Dakota Century Code, relating to indigent
3 defense costs for mental illness commitment proceedings, civil commitment of sexual
4 predators, and for guardian ad litem services; and to provide a statement of legislative intent.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 14-07.1-05.1 of the North Dakota Century Code
7 is amended and reenacted as follows:

8 **14-07.1-05.1. Appointment of guardian ad litem for minor.** The court, upon the
9 request of either party or upon its own motion, may appoint a guardian ad litem in an action for
10 a protection order to represent a minor concerning custody, support, or visitation if either party
11 or the court has reason for special concern as to the immediate future of the minor. The
12 guardian ad litem may be appointed at the time of a temporary protection order or at any time
13 before the full hearing. The role of the guardian ad litem consists of investigation and making a
14 recommendation and report to the court. At no time may the involvement of the guardian
15 ad litem alter the requirements set forth in section 14-07.1-03. The appointment of the
16 guardian ad litem expires immediately after the full hearing unless the court retains the right,
17 upon specific finding of need, to continue the appointment of a guardian ad litem to participate
18 in visitation. The guardian ad litem shall have access to records before the court except as
19 otherwise provided by law. The court may direct either or both parties to pay the guardian
20 ad litem fees established by the court. If neither party is able to pay the fees, the court, ~~after~~
21 ~~notice to the state's attorney of the county of venue,~~ may direct the fees to be paid, in whole or
22 in part, by the ~~county of venue~~ state. The court may direct either or both parties to reimburse
23 the ~~county~~ state, in whole or in part, for the payment.

1 **SECTION 2. AMENDMENT.** Section 14-09-06.3 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **14-09-06.3. Custody investigations and reports - Costs.**

- 4 1. In contested custody proceedings the court may, upon the request of either party,
5 or, upon its own motion, order an investigation and report concerning custodial
6 arrangements for the child. The court shall designate a person or agency
7 responsible for making the investigation and report, which designees may include
8 the county social service board, public health officer, school officials, and any other
9 public agency or private practitioner it deems qualified to make the investigation.
- 10 2. The investigator may consult any person who may have information about the child
11 and any potential custody arrangements, and upon order of the court may refer the
12 child to any professional personnel for diagnosis.
- 13 3. The court shall mail the investigator's report to counsel and to any party not
14 represented by counsel at least thirty days before the hearing. The investigator
15 shall make available to any such counsel or party the complete file of data and
16 reports underlying the investigator's report and the names and addresses of all
17 persons whom the investigator has consulted. A party may call the investigator
18 and any person whom the investigator has consulted for cross-examination at the
19 hearing. A party may not waive the party's right of cross-examination before the
20 hearing.
- 21 4. The court shall enter an order for the costs of any such investigation against either
22 or both parties, except that if the parties are indigent the expenses must be borne
23 by the ~~county~~ state.

24 **SECTION 3. AMENDMENT.** Section 14-09-06.4 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **14-09-06.4. Appointment of guardian ad litem or child custody investigator for**
27 **children in custody, support, and visitation proceedings - Immunity.** In any action for an
28 annulment, divorce, legal separation, or other action affecting marriage, when either party has
29 reason for special concern as to the future of the minor children, and in any action when the
30 custody or visitation of children is contested, either party to the action may petition the court for
31 the appointment of a guardian ad litem to represent the children concerning custody, support,

1 and visitation. The court, in its discretion, may appoint a guardian ad litem or child custody
2 investigator on its own motion. If appointed, a guardian ad litem shall serve as an advocate of
3 the children's best interests. If appointed, the child custody investigator shall provide those
4 services as prescribed by the supreme court. The court may direct either or both parties to pay
5 the guardian ad litem or child custody investigator fee established by the court. If neither party
6 is able to pay the fee, the court may direct the fee to be paid, in whole or in part, by the ~~county~~
7 ~~of venue~~ state. The court may direct either or both parties to reimburse the ~~county~~ state, in
8 whole or in part, for such payment. Any guardian ad litem or child custody investigator
9 appointed under this section who acts in good faith in making a report to the court is immune
10 from any civil liability resulting from the report. For the purpose of determining good faith, the
11 good faith of the guardian ad litem or child custody investigator is a disputable presumption.

12 **SECTION 4. AMENDMENT.** Section 14-17-15 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **14-17-15. Costs.** The court may order reasonable fees of experts and the child's
15 guardian ad litem and other costs of the action and pretrial proceedings, including genetic tests,
16 to be paid by the parties in proportions and at times determined by the court. The court may
17 order the proportion of any indigent party to be paid by the ~~county social service board of the~~
18 ~~county in which the child resides or is found~~ state. In addition, the court may award reasonable
19 attorney's fees if an award is permitted under chapter 28-26.

20 **SECTION 5. AMENDMENT.** Section 25-03.1-13 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **25-03.1-13. Right to counsel - Indigency - Waiver - Recoupment - Limitations.**

- 23 1. Every respondent under this chapter is entitled to legal counsel.
- 24 2. Unless an appearance has been entered on behalf of the respondent, the court
25 shall, within twenty-four hours, exclusive of weekends or holidays, from the time
26 the petition was filed, appoint counsel to represent the respondent. If a respondent
27 retains counsel, the retained counsel shall immediately notify the court of that fact.
- 28 3. If, after consultation with counsel, the respondent wants to waive the right to
29 counsel or the right to any of the hearings provided for under this chapter, the
30 respondent may do so by notifying the court in writing. The notification must

clearly state the respondent's reasons for the waiver and must also be signed by counsel.

4. If the court determines that the respondent is indigent, the court shall order that appointed counsel be compensated from county state funds ~~of the county that is the respondent's place of residence~~ in a reasonable amount based upon time and expenses. After notice and hearing, the court may order a respondent with appointed counsel to reimburse the county state for expenditures made on the respondent's behalf.
5. If the state's attorney of a the county that ~~has expended sums under subsection 4 on behalf of a respondent who is liable to reimburse the county~~ is the respondent's place of residence determines that the respondent may have funds or property to reimburse the county state, the state's attorney shall seek civil recovery of those sums. Commencement of the action must occur within six years after the date the sums were paid.

SECTION 6. AMENDMENT. Section 25-03.3-09 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-09. Right to counsel - Waiver.

1. Every respondent is entitled to legal counsel. Unless an appearance has been entered on behalf of the respondent, the court, within twenty-four hours from the time the petition was filed, exclusive of weekends or holidays, shall appoint counsel to represent the respondent. If a respondent retains counsel, the retained counsel immediately shall notify the court of that fact.
2. After consultation with counsel, the respondent may waive the right to counsel or the right to any hearing provided pursuant to this chapter by notifying the court in writing. The notification must clearly state the respondent's reasons for the waiver and the respondent's counsel shall separately certify that counsel has explained to the respondent the proceedings, the legal and factual issues, potential defenses, the burden of proof, and possible outcomes of the proceedings. No guardian, guardian ad litem, attorney, or other individual may waive the right to counsel on behalf of an individual with mental retardation.

1 3. If the court determines that the respondent is indigent, the court shall appoint
2 counsel and order that appointed counsel be compensated by the ~~county that is~~
3 ~~the respondent's place of residence~~ state in a reasonable amount based upon time
4 and expenses.

5 4. The state's attorney of a the county that ~~has expended sums pursuant to~~
6 ~~subsection 3~~ is the respondent's county of residence may seek civil recovery of
7 those sums from property of the respondent. Commencement of the action must
8 occur within six years after the date the sums were paid. After notice and hearing,
9 the court may order an individual to reimburse the ~~county~~ state for expenditures
10 made on that individual's behalf pursuant to this chapter.

11 **SECTION 7. LEGISLATIVE INTENT - FUNDING.** It is the intent of the legislative
12 assembly that \$113,830 for the judicial branch and \$277,470 for the office of administrative
13 hearings be appropriated from the state aid distribution fund in House Bill No. 1002 and House
14 Bill No. 1018, respectively, to administer the provisions of this Act for the period beginning with
15 the effective date of this Act and ending June 30, 2005.