

HOUSE BILL NO. 1108

Introduced by

Representative DeKrey

Senator Lyson

(At the request of the Commission on Legal Counsel for Indigents)

1 A BILL for an Act to amend and reenact section 27-20-26 of the North Dakota Century Code,
2 relating to the right to counsel under the Juvenile Court Act.

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

4 **SECTION 1. AMENDMENT.** Section 27-20-26 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **27-20-26. Right to counsel - Exceptions.**

7 1. Except as otherwise provided in this section, a party who is indigent and unable to
8 employ legal counsel is entitled to counsel at public expense at custodial,
9 post-petition, and informal adjustment stages of proceedings under this chapter.
10 During the informal adjustment stage of a proceeding only the child, if determined
11 to be indigent, is entitled to counsel at public expense. In proceedings regarding
12 allegations of unruliness or delinquency, a child's parent, legal guardian, or
13 custodian, if determined to be indigent, is entitled to counsel at public expense only
14 during the dispositional stage of the proceedings. If a party appears without
15 counsel the court shall ascertain whether the party knows the party may be
16 represented by counsel and that the party is entitled to counsel at public expense if
17 indigent. The court may continue the proceeding to enable a party to obtain
18 counsel and, subject to this section, counsel must be provided for an
19 unrepresented indigent party upon the party's request. Counsel must be provided
20 for a child who is under the age of eighteen years and is not represented by the
21 child's parent, guardian, or custodian at custodial, post-petition, and informal
22 adjustment stages of proceedings under this chapter. If the interests of two or
23 more parties conflict, separate counsel must be provided for each of them.

- 1 2. An indigent party is one who at the time of requesting counsel is unable, without
2 undue financial hardship, to provide for full payment of legal counsel and all other
3 necessary expenses for representation. A child who, at the time of the proceeding,
4 is under the age of eighteen years is not to be considered indigent under this
5 section if the child's parent can, without undue financial hardship, provide full
6 payment for legal counsel and other expenses of representation. Any parent
7 ~~entitled to the custody~~ of a child who is under the age of eighteen and is involved in
8 a proceeding under this chapter is, unless undue financial hardship would ensue,
9 responsible for providing legal counsel and for paying other necessary expenses of
10 representation for the parent's child. The court may enforce performance of this
11 duty by appropriate order.
- 12 3. For purposes of this section and section 27-20-49, "party" means the child and the
13 child's parent, legal guardian, or custodian.