

HB 1035
House Judiciary Committee
January 26, 2021
Testimony of Travis W. Finck, Executive Director, NDCLCI

Chairman Klemin, members of the House Judiciary Committee, my name is Travis Finck and I am the executive director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota. I rise today on behalf of the Commission to provide testimony in support of HB 1035.

The Constitution of the United States of America guarantees individuals charged with a crime the right to due process of law. Inherent within due process is the to have an attorney provided if you are otherwise unable to afford an attorney. The United States Supreme Court in the case of In Re Gault, in 1967, recognized the right of an accused child to counsel. In North Dakota, there is also a statutory right to counsel for children accused of a delinquent act. Currently, North Dakota Century Code 27-20-26, requires a child be found to be indigent prior to having counsel assigned. The child's status as indigent is determined by the financial resources of the parents.

HB 1035 would presume indigency on behalf of a child. The Commission supports this welcomed addition to the juvenile court act, provided we are funded adequately to provide these services. The Commission did submit a fiscal note with this bill. The fiscal note will be addressed by the appropriations committee.

On the policy side, the provision of counsel to all juveniles is sound public policy. Too often, a child is alleged to have committed a delinquent act and admits to an offense without the assistance of counsel. This can have lifelong negative implications for the child. All though juvenile adjudications are sealed when the child reaches the age of majority, the consequences of a juvenile adjudication can stay with a child forever. Consequences of a juvenile adjudication may include but are not limited to: effects on employment, ability to serve in the military, ability to receive financial aid for college, loss of a driver's license, registration as an offender against children, registration as a sex offender and can even serve to enhance a sentence in Federal or State court. Thus, it is vitally important a child have counsel to advise them.

There are several reasons why a child or their parents may not avail themselves to apply for indigent defense counsel. Parents may be the victims of the crime. The parents may think the child needs to learn from his actions and just admit to what he did wrong. The alleged delinquent act may cause additional strain on the family and they may choose to not involve anyone more than already involved. While many of these are important decisions to be made, none of them consider the potential lifelong implication of a juvenile adjudication.

Mr. Chairman, members of the Committee, it is a policy decision for this legislature to make as to whether children should be presumed indigent and that is only a small part of HB 1035. HB 1035 serves to reform the juvenile justice system, protect the community, serve the public and protect children. The provision presuming indigence protects all children, even those accused of committing a delinquent act. For the reasons contained herein, the Commission supports HB 1035. The Commission supports the specific idea of the provision of counsel to all juveniles and needs adequate funding to do so. Therefore, we respectfully request a do pass recommendation.

Respectfully Submitted:



Travis W. Finck

Executive Director, NDCLCI