

HB 1035  
Senate Judiciary Committee  
March 23, 2021  
Testimony of Travis W. Finck, Executive Director, NDCLCI

Madam Chair Larson, members of the 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 right to the assistance of an attorney 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. Courts have also found Children have fundamental liberty interests at stake in deprivation and Termination of Parental Rights cases. 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.

Additionally, a child would have presumed right to counsel in a CHINS case that is referred to court. Lastly, a child would be presumed indigent and have counsel appointed in an CHIPS case as well, as long as they are of sufficient age and competency to assist counsel.

Madam Chair, 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 entire juvenile justice system, protect the community, serve the public and protect children. The provision presuming indigence protects all children. 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

1 If the child admits to driving or being in actual physical control of a vehicle in violation  
2 of section 39-08-01 or an equivalent ordinance, the child may be required to pay a fine  
3 as a condition imposed under this section.

- 4 4. An incriminating statement made by a child to the juvenile court officer or designee  
5 giving information and advice incident to the giving of counsel and advice may not be  
6 used against the child over objection in any proceeding or as part of a risk and need  
7 screening or assessment process.

8 **27-20.2-10. Venue.**

9 Except as provided in sections 27-20.3-03 and 27-20.4-03, a proceeding in this chapter  
10 may be commenced in the county in which the child resides or the county in which the acts  
11 constituting the alleged conduct occurred.

12 **27-20.2-11. Transfer to another juvenile court within the state.**

13 If the child resides in a county of the state and the proceeding is commenced in a court of  
14 another county, the court, on motion of a party or on motion of the court made before final  
15 disposition and in consultation with the court in the other county, may transfer the proceeding to  
16 the county of the child's residence for further action. Like transfer may be made if the residence  
17 of the child changes pending the proceeding. The proceeding must be transferred if the child  
18 has been adjudicated delinquent or a child in need of services and other proceedings involving  
19 the child are pending in the juvenile court of the county of the child's residence.

20 **27-20.2-12. Right to counsel.**

- 21 1. Except as provided in section 27-20.1-09, a child alleged to be within the jurisdiction of  
22 the court in an action arising under chapters 27-20.1, 27-20.2, 27-20.3, and 27-20.4  
23 has the right to be represented by counsel in all proceedings in which a petition has  
24 been filed. Counsel for the child must be appointed, regardless of income, unless  
25 counsel is retained for the juvenile, in any proceeding in which the juvenile is alleged  
26 to be:
- 27 a. Delinquent;
  - 28 b. A child in need of services; or
  - 29 c. A child in need of protection if the child is of sufficient age and competency to  
30 assist counsel.

- 1       2. A child may waive the right to counsel in a juvenile delinquency proceeding if the child,  
2       who is fourteen years of age or older and the court has determined the waiver is  
3       knowing, voluntary, and intelligent. The waiver must be made on the record. If a child  
4       waives counsel for a hearing, the child must be informed of the right to revoke the  
5       waiver and request counsel at all subsequent hearings.
- 6       3. The court shall require payment for reimbursement of counsel appointed pursuant to  
7       this section from a person that has legal care, custody, or control of the child. The  
8       court must include this finding in the findings of fact and order for disposition.
- 9       4. A child's parent, legal guardian, or custodian is entitled to counsel upon the filing of an  
10       application for counsel and a determination of indigency. If a party appears without  
11       counsel, the court shall determine whether the party knows the party may be  
12       represented by counsel and that the party is entitled to counsel at public expense if  
13       indigent. The court may continue the proceeding to enable a party to obtain counsel. A  
14       child's parent, legal guardian, or custodian determined to be indigent is entitled to  
15       counsel:
  - 16       a. At a detention hearing;
  - 17       b. At the dispositional stage of a juvenile delinquency matter;
  - 18       c. At all proceedings in a child in need of services or protection; or
  - 19       d. In a permanency or review of an order entered in any of the proceedings under  
20       subdivision a, b, or c.
- 21       5. The child may elect to be represented by counsel for a nonjudicial adjustment.

22       **27-20.2-13. Other basic rights.**

- 23       1. A party is entitled to the opportunity to introduce evidence and otherwise be heard in  
24       the party's own behalf and to cross-examine adverse witnesses.
- 25       2. A child charged with a delinquent act need not be a witness against or otherwise  
26       incriminate oneself. An extrajudicial statement, if obtained in the course of violation of  
27       this chapter or which would be constitutionally inadmissible in a criminal proceeding,  
28       may not be used against a child. Evidence illegally seized or obtained may not be  
29       received over objection to establish the allegations made against a child. A confession  
30       validly made by a child out of court is insufficient to support an adjudication of