

HB 1137
68th Legislative Assembly
House Judiciary Committee
January 18, 2023
Testimony of Travis W. Finck, Executive Director NDCLCI in Support

Chairman Klemin, Vice Chair Karls, members of the House Judiciary Committee, I rise today on behalf of the Commission on Legal Counsel for Indigents in support of HB 1137. The Commission on Legal Counsel is the state agency responsible for the provision of legal services for individuals when there is a constitutional, statutory or rule based right to counsel.

HB 1137 makes some amendments to the new juvenile court act. While I will focus specifically on Section 9, let me state the Commission supports all the proposed changes in HB 1137. It has been an absolute privilege to work on the drafting of this bill last session and the amendments. It was truly an example of what can happen when people from all three branches of government collaborate with technical guidance from experts.

Section 9 of HB 1137 deals with the right to counsel within the juvenile court act. On Page 9, line 26 the right of a child to have counsel is removed for a child in need of services cases. ON Page 10, line 16 the right of a parent, legal guardian or custodian is removed for a child in need of services case. This is a direct result of the child in need of services cases being moved to the human service zones and away from the Court.

The remaining changes to the right to counsel section involve Section 3 of 27-20.2-12. The amendment would be to change the shall on pg 10, line 3 to a may and then cleans up the language regarding findings. These reimbursements, when ordered, go to the general fund, and do not come back to the Commission. As some background on this section, this section was added to the Juvenile Court Act last session over concerns the Commission would be providing services to non-indigent families who would be able to hire a private attorney if we no longer require a finding of indigency. Additionally, the legislature required me to report during the interim to legislative management the breakdown of indigent v. non-indigent and the amount of attorney fees ordered to be reimbursed and those collected. On June 30, 2022, I did submit that report. It was determined based upon numbers provided by the Court to the Commission, a finding was made in only 275 cases. Of those 275 cases, 254 were determined to be indigent. Thus, approximate 92.4 percent of the cases where a finding was made was indigent families. In the report provided to legislative management, a total of \$581 in

attorney fees was ordered to be reimbursed against families who would be declared indigent. \$1,614 in attorney fees was ordered in against the 21 non-indigent children. This resulted in a total assessment of \$2,195, of which at the time of the report only \$200 had been collected.

The most troubling thing within the numbers is the \$581 in attorney fees ordered against indigent families. Under the old uniform juvenile court act and policies of the commission, no reimbursement for attorney fees was ordered for representation provided on behalf of an indigent child. The juvenile court act provided this option to courts and this bill will fix those problems.

Lastly, it is important to remember since the 1967 case of In Re Gault Juveniles have enjoyed the right to counsel when alleged to have committed a juvenile act. The Commission steadfastly continues to provide this service. HB 1137 does not affect the constitutional right to counsel. The intent is by removing shall and replacing it with a may, judicial offers will only assess fees when absolute appropriate against families that would otherwise be found to be ineligible for services. The Commission therefore respectfully requests the bill receive a do pass recommendation from the committee. A Do Pass recommendation is furthering the intent of Gault and enables the Commission to continue to be the agency supporting the defense of liberty.

Respectfully Submitted:



Travis W. Finck, Executive Director
(701) 845-8632
tfinck@nd.gov