

HB 1137
68th Legislative Assembly
Senate Judiciary Committee
March 7, 2023

Testimony of Travis W. Finck, Executive Director NDCLCI in Support

Madam Chair Larson, members of the Senate 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

HB 1035
Report on First Fiscal Year Expenditures and Collections
Legislative Management
June 30, 2022
Prepared by Travis W. Finck, Executive Director, NDCLCI

Good morning, Mr. Chairman, it is my honor and privilege to submit the following report in accordance with the demands of HB 1035. Below you will find the information as requested by the legislative assembly.

1. Actual costs incurred to date and expected costs to be incurred for the 2021-23 biennium to provide legal counsel and related services to indigent juveniles:

The North Dakota Commission on Legal Counsel for Indigents does not have the ability to track which parties are indigent. The Court, under HB 1035, is required to make the finding of indigency. The finding of indigency is not reported back to the Commission, so we have no way of tracking such data. However, we can provide the total amount expended on contract services to provide counsel.

As of the end of May 2022, the Commission had spent \$511,505.15 in contract services, operating fees and services and travel related to juvenile court matters. This number would not include time spent on juvenile cases by full time public defenders within our public defender offices.

It is expected the Commission will expend \$1,116,011.24 for the entire biennium assuming case numbers remain consistent across the state. Again, this number would exclude time spent by full time public defenders within our public defender offices. (See Attachment 1).

The only way to attempt to ascertain the difference in costs spent on indigent v. non-indigent is take court data over the first 11 months of the fiscal year and apply to the costs. The Court has provided information, contained herein as attachment 2, of a breakdown of indigen v. non-indigent findings in juvenile delinquency cases in North Dakota. (It is important to note some of the costs provided herein also relate to Child in Need of Service and Child in Need of Protection/Termination cases). However, a parent must be determined to be indigent to receive services in those cases and a child must be of sufficient competent age to assist counsel to have counsel appointed).

Examining the data provided by the court, only 7.6 % of the cases where a finding was made by the Court were found to be non-indigent families (parents or child is not delineated). Therefore, 92.4% of the services provided, in cases in which the finding was made, were provided to indigent families. Using that number applied to the total incurred and expected costs: \$472,630.76 has been spent on indigent representation through May and \$1,031,194.53 will be spent on indigent representation for the biennium.

2. Actual costs incurred to date and expected costs to be incurred for the 2021-23 biennium to provide legal counsel and related services to nonindigent juveniles:

Please reference section 1 for explanation of the statistical inaccuracies of separating indigent and non-indigent juvenile representation. However, using the same assumptions as section 1: \$38,874.39 has been spent on non-indigent representation and it is expected \$84,816.85 will be spent for the biennium.

3. Any amounts collected from those financially able to pay all or part of the cost of providing legal counsel and related services for juveniles:

The North Dakota Commission on Legal Counsel for Indigents does not collect fees related to juvenile representation or any other fee. The fee ordered in 1035 is collected by the Court and deposited into the general fund. According to data received from the State Court Administrator's Office, a total of \$2,195 has been ordered by Judges across the state. Of the \$2,195 ordered, \$1,614 was ordered in non-indigent cases and \$581 ordered in Indigent cases. (See Attachment 2). As of the date of receiving the data, courts had collected only \$400 in payments.



Travis W. Finck, Executive Director
North Dakota Commission on Legal Counsel for Indigents
(701) 845-8632
tfinck@nd.gov

ATTACHMENT 2: COURT ORDERED FEES AND COLLECTIONS

Delinquent cases filed since 7/1/2021

Total Cases	772
Pending	119
No Petition	70
Dismissed	122
Cases with no indigent finding	186
Cases with finding	275

		Amount Ordered	Payments
Indigent	254	581	
Non-Indigent	21	1,614	200
Total	275	2,195	200