

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1122

2007 HOUSE JUDICIARY

HB 1122

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1122

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/10/07

Recorder Job Number: 846

Committee Clerk Signature

Penrose

Minutes:

Chairman DeKrey: We will open the hearing on HB 1122.

H. Jean Delaney, Dep. Director, Commission on Legal Counsel for Indigents: (see attached testimony).

Rep. Dahl: On page 22, it says the compensation and mileage and travel expense of witness. I was just wondering, is that the way it is written in other sections of the Century Code. Does this address "reasonable" expenses on line 19.

H. Jean Delaney: I think that's a good suggestion. I am not familiar with this. Our agency does have final approval of expenses before they are incurred. The attorneys have a limit that they can't go above, then they have to request for extraordinary expenses.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. We will take this matter up.

Rep. Klemin: I guess there is a difference between paying reasonable witness fees and paying statutory witness fees. The question I would have and maybe Robin could address this, in the criminal context - are you talking about a statutory provision for witness fees, while we are talking about changing this concept so that we can pay people for their time.

H. Jean Delaney: There are statutory fees for lay witnesses, we also have witness fees for experts which may be charging an hourly rate, instead of a statutory amount. Travel expenses are set by statute, the \$50/night for overnight per diem, \$5 for breakfast and mileage; those are set by statute.

Rep. Klemin: So really we're not talking about statutory fees here, if we get into the context of reasonable fees, then we're on another level possibly. I've had this happen in other states, where a person can say, "I'm called as a witness in this case, and my time is worth \$20/hr" as opposed to the statutory fee which is different. So reasonable fees is opening a door to a different subject.

H. Jean Delaney: That also is a good thought and sounds reasonable. Fees incurred would be governed by policies that are in place. The attorneys are subject to our policies and as you said, if you put reasonable in there it could give them an argument that whatever they think is reasonable, that it would be paid, whether or not it is statutory or not. We don't pay over the statutory amount or the \$25 for a hearing.

Rep. Klemin: You don't pay under the statutory amount either. You pay the statutory amount.

H. Jean Delaney: Yes, except for things like experts.

Rep. Klemin: But that is a different subject. So I was thinking that reasonable would get us into a different dilemma.

H. Jean Delaney: The current language is what the Supreme Court shall pay the other fees. It doesn't have reasonable in the Supreme Court mandate to pay those other fees.

Rep. Klemin: I know there are a lot of witnesses who would like to get paid reasonable fees for attending that trial as witnesses, but so far we haven't done that.

Rep. Delmore: You're saying, Rep. Klemin, you don't this is in about reasonable fees.

Rep. Klemin: The statute says \$25/day. For some people \$25/day is not very much for their time. So what is reasonable.

Rep. Dahl: Are there other fees, other than expert witness fees that may fall outside of that area.

Rep. Klemin: There is a separate statute that deals with fees on expert witnesses.

H. Jean Delaney: Mr. Gange asked that I request that on page 22, the end of line 18 and line 19, where it reads "and the Supreme Court shall pay other witness fees for indigents and expenses" be stricken. My concern was that the agency not be responsible for paying those indigent expenses for cases in which we don't provide services. There are many pro se defendants that don't want our services. We would not want to be responsible for paying their fees and expenses when we wouldn't have any control over how they are being incurred. Mr. Gange said that the Supreme Court doesn't pay other expenses either. I would request that language be stricken as well.

Rep. Kretschmar: I move that amendment.

Rep. Wolf: Second.

Chairman DeKrey: Voice vote, motion carried. We now have the bill before us as amended.

Rep. Koppelman: I move a Do Pass as amended.

Rep. Delmore: Second.

14 YES 0 NO 0 ABSENT

DO PASS AS AMEND

CARRIER: Rep. Heller

FISCAL NOTE
 Requested by Legislative Council
 01/02/2007

Bill/Resolution No.: HB 1122

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Clean up bill which will not have any real fiscal impact. This bill cleans up the language in statutes which still provide that the court appoints counsel and pays costs and expenses of indigent defense.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

No fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

NA

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

NA

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

NA

Name:	H. Jean Delaney	Agency:	Commission on Legal Counsel for Indigents
Phone Number:	701-845-8632	Date Prepared:	01/04/2007

House Amendments to HB 1122 (78070.0101) - Judiciary Committee 01/10/2007

Page 22, line 17, overstrike the comma and remove "the commission on legal counsel for indigents shall pay witness fees and expenses"

Page 22, line 18, remove "for witnesses in those cases in which counsel has been provided by the commission,"

Page 22, line 19, overstrike "supreme court shall pay other witness fees for indigents and expenses" and insert immediately thereafter "commission on legal counsel for indigents shall pay witness fees and expenses for witnesses in those cases in which counsel has been provided by the commission"

Renumber accordingly

Date: 1/10/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1122

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Koppelman Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 14 No 0

Absent ~~0~~

Floor Assignment Rep. Heller

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1122: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1122 was placed on the Sixth order on the calendar.

Page 22, line 17, overstrike the comma and remove "the commission on legal counsel for indigents shall pay witness fees and expenses"

Page 22, line 18, remove "for witnesses in those cases in which counsel has been provided by the commission,"

Page 22, line 19, overstrike "supreme court shall pay other witness fees for indigents and expenses" and insert immediately thereafter "commission on legal counsel for indigents shall pay witness fees and expenses for witnesses in those cases in which counsel has been provided by the commission"

Renumber accordingly

2007 SENATE JUDICIARY

HB 1122

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1122

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 21, 2007

Recorder Job Number: 3676

Committee Clerk Signature *Mona L. Solby*

Minutes: Relating to providing legal counsel at public expense.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following hearing:

Testimony in Favor of the Bill:

H. Jean Delaney, Deputy Director, Commission on Legal Counsel for Indigents, gave testimony – Att. #1

Robin Husby, Executive Director for the Commission on Legal Counsel (meter 3:46) Testified in support of the bill and they spoke of there relationship with the Counsel.

Testimony Against the bill:

None

Testimony Neutral to the bill:

None

Senator David Nething, Chairman closed the hearing.

Recorder Job Number: 3678

Senator David Nething, Chairman reopened the hearing.

Sen. Nelson made the motion to Do Pass HB 1122 and **Sen. Fiebiger** seconded the motion.

All members were in favor and the motion passes.

Carrier: **Sen. Nelson**

Senator David Nething, Chairman closed the hearing.

REPORT OF STANDING COMMITTEE

HB 1122, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1122 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1122

HOUSE BILL NO. 1122
COMMISSION ON LEGAL COUNSEL FOR INDIGENTS
PO Box 149, Valley City, ND 701-845-8632
Wednesday, January 10, 2007, 9:00 a.m., Prairie Room

Presenting the bill synopsis: H. Jean Delaney, Deputy Director (jedelaney@nd.gov)

House Bill No. 1122 is a bill to amend and reenact various sections of the North Dakota Century Code relating to providing legal counsel at public expense.

Effective January 1, 2006, the Commission on Legal Counsel for Indigents became responsible for providing indigent defense services (other than in municipal matters). Prior to that time, these services were provided through the Supreme Court. This bill cleans up those statutes that still indicate that the court appoints counsel and that the court or supreme court is responsible for calculating, approving, and paying costs and expenses in those matters in which this agency provides services. It provides that the juvenile court may order those parents who are financially able to do so, to pay expenses that are now paid by this agency, just as the court has been able to do for the expenses payable by the supreme court. This bill also provides the respondent must be indigent to be entitled to counsel provided at public expense for a hearing under NDCC Ch. 23-07.6 (Communicable Disease Confinement Procedure). Finally, many different terms are used throughout the century code to refer to a person who lacks sufficient resources to provide for the person's own attorney; this bill standardizes the language so that the term used is "indigent."

Examples:

- "court shall appoint counsel" is changed to "counsel must be provided at public expense"
- "appointed counsel" is changed to "counsel provided at public expense"
- "lacks sufficient resources to retain counsel" is changed to "is indigent"
- "cannot afford counsel" is changed to "is indigent"
- "needy persons" is changed to "indigent"
- "unable without undue financial hardship to employ counsel" is changed to "indigent"
- "as a needy person the party is unable to employ counsel" is changed to "indigent"
- "if the party is a needy person" is changed to "if indigent"

AH #1
2-21-07

HOUSE BILL NO. 1122
COMMISSION ON LEGAL COUNSEL FOR INDIGENTS
PO Box 149, Valley City, ND 701-845-8632
Wednesday, February 21, 2007, 9:00 a.m., Fort Lincoln Room

Presenting the bill synopsis: H. Jean Delaney, Deputy Director (jedelaney@nd.gov)

House Bill No. 1122 is a bill to amend and reenact various sections of the North Dakota Century Code relating to providing legal counsel at public expense.

Effective January 1, 2006, the Commission on Legal Counsel for Indigents became responsible for providing indigent defense services (other than in municipal matters). Prior to that time, these services were provided through the Supreme Court. This bill cleans up those statutes that still indicate that the court appoints counsel and that the court or supreme court is responsible for calculating, approving, and paying costs and expenses in those matters in which this agency provides services. It provides that the juvenile court may order those parents who are financially able to do so, to pay expenses that are now paid by this agency, just as the court has been able to do for the expenses payable by the supreme court. This bill also provides that the respondent must be indigent to be entitled to counsel provided at public expense for a hearing under NDCC Ch. 23-07.6 (Communicable Disease Confinement Procedure). Finally, many different terms are used throughout the century code to refer to a person who lacks sufficient resources to provide for the person's own attorney; this bill standardizes the language so that the term used is "indigent."

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