

2009 HOUSE JUDICIARY

HB 1108

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1108

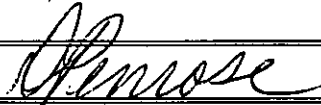
House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/14/09

Recorder Job Number: 7012, 7016

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** We will open the hearing on HB 1108.

**Jean Delaney, Dep. Director, ND Commission on Legal Counsel for Indigents:** Sponsor (attachment).

**Rep. Koppelman:** First of all, this deals with parents who are divorced. Does it get into child support issues, where the non-custodial parent is paying child support, aren't you increasing the amount that parent would have to pay for child support. Could they go back to court and try to use this as a bargaining tool to reduce their child support.

**Jean Delaney:** This doesn't have anything to do with child support. The parents have an obligation to support their child and provide for an attorney. The statute currently provides that a child is not to be considered indigent under this section, if the child's parents can, without any financial hardship, provide full payment for legal counsel and other expenses. Then it goes on to talk about if any parent, entitled to the custody of a child, is involved in a proceeding where it would pose an undue financial hardship, can also apply for an attorney if needed. It's kind of strange how the statute is written, in that if you determine the child indigent by maybe looking at both parents, not just the custodial parent, is responsible to pay. Which is actually more unfair to a fairly poor legal parent, if you would look at the non-custodial parent, who

might have more resources available to provide for the child, and leads to the determination that the child is not indigent? Then the custodial parent would have to pay, when they can't afford it.

**Rep. Koppelman:** Based on what you said, they look at both parents' incomes to determine whether the child is indigent or not. So, in order for that child to qualify for an indigent defense, both parents can't be making that much. So if you have two parents divorced, one is custodial and one is not, the presumption is that the non-custodial, if they can afford to pay, probably also has an order to pay child support. You said this has nothing to do with child support, it has to do with the obligation to support the child. So you have a parent making \$20,000/yr and they are paying \$8,000/yr in support for the child, and now you are going to pay to provide counsel for the juvenile. The court, in a divorce procedure, looks at those issues such as child support and now is in a position to pay for additional fees for a lawyer. Yes the custodial parent is raising the child, but is that taken into consideration.

**Jean Delaney:** You could argue that this is an unanticipated cost for the custodial parent to pay for the attorney. If you have the non-custodial parent that you described, who made \$20,000/yr and paid child support. They would actually be indigent and qualify for an attorney. The statute, as it is currently written is confusing to tell which income to look at. If you read it as, it is only the parent who has custody of the child that is responsible for providing indigent defense services, the father or mother who is the non-custodial parent with a great income, isn't looked at.

**Rep. Koppelman:** I thought you said earlier that the way the statute is currently written that both parents, whether custodial or non-custodial, are subject to having their assets looked at to determine if that child is indigent in the initial phase. Later you said there is an inconsistency

because it calls upon the custodial parent to be responsible; so how come both incomes aren't looked at.

**Jean Delaney:** It's because the statute is not clear and depending on which court you are in, which judicial district, it can be decided either way. This bill clarifies that. Both parents have an obligation to provide the counsel for the child and if they are indigent, counsel will be provided.

**Rep. Koppelman:** The indigent process is new in ND because the Supreme Court said that there needed to be a separate office to handle these cases. Were there courts that would collect these funds from the defendants after they were paid.

**Jean Delaney:** There were portions of the state that were very good at recouping attorney fees; others were not.

**Rep. Koppelman:** So there is kind of a patchwork of who paid.

**Jean Delaney:** Yes.

**Rep. Delmore:** You're saying that it was in there but not been clear that the custodial or non-custodial parent would have to pay.

**Jean Delaney:** Yes.

**Rep. Delmore:** Have you had cases where you have gone to a non-custodial parent and been successful in collecting the fees.

**Jean Delaney:** I can't answer that. I do not know. It's not like in the criminal realm where it is ordered on a consistent basis and I can't think of a specific case.

**Rep. Delmore:** Would you just look at the non-custodial, or would you look at the spouse's income of that non-custodial parent, can that be factored in or not.

**Jean Delaney:** When the judge or a clerk looks at the application, it does include information about a spouse's income, which is looked at when the parent is applying for an attorney for

themselves, because the spouse's, even if the other spouse isn't a parent of the child who is the subject of the proceeding, they have an obligation to support each other. So in that case yes, but if it is an attorney for the child, the spouse's income is not looked at.

**Rep. Klemin:** Does the term "parent" under this statute include a person whose parental rights have been terminated.

**Jean Delaney:** No, it does not.

**Chairman DeKrey:** This bill came from the Indigent Defense Commission, because we felt our responsibility as a taxpayer was that someone who was obviously indigent would receive an attorney. There were abuses in the old system and we still have problems. We're not there, we're working on it. We're getting better. Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

**Chairman DeKrey:** What are the committee's wishes in regard to HB 1108.

**Rep. Griffin:** I move a Do Pass.

**Rep. Wolf:** Second.

**13 YES 0 NO 0 ABSENT**

**DO PASS**

**CARRIER: Rep. Boehning**

**FISCAL NOTE**  
**Requested by Legislative Council**  
12/22/2008

Bill/Resolution No.: HB 1108

**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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 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).*

This bill deals with the right to counsel under the Juvenile Court Act. Any fiscal impact will be minimal.

**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.*

The bill clarifies that counsel must be provided for a child who is under the age of 18 and not represented by the child's parent, guardian or custodian, but does not require appointment in this situation for a child 18 years or older at the time of the hearing. However, if the child who is aged 18 or older at the time of the hearing is indigent and requests an attorney, he or she would be provided one, and it is anticipated that most, if not all, of the cases will fall under this scenario.

The bill also clarifies that the indigency of a child under 18 is determined by the parents' ability to pay, and that the indigency of a child aged 18 and older, is determined by the child's ability to pay. The common practice, however, has been to determine the indigency of a child aged 18 or older based on the child's income and assets, so this should not change the number of cases in which a child aged 18 or older is found to be indigent and entitled to counsel.

Under this bill, indigency of a child under the age of 18 is determined by ability of the child's parents, not just the custodial parent, to pay for attorney fees and costs. This may decrease the number of cases in which indigent counsel is assigned, but it is not anticipated to be a significant number, and the number cannot be calculated at this time.

**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.*

**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.*

**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.*

<b>Name:</b>	Robin Huseby	<b>Agency:</b>	Commission on Legal Counsel for Indigents
<b>Phone Number:</b>	701 845-8632	<b>Date Prepared:</b>	12/23/2008

Date:

Roll Call Vote #:

1/14/09

1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1108**

**HOUSE JUDICIARY COMMITTEE**

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Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ DP ☐ DNP ☐ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Griffin Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 No 0

Absent 0

Floor Carrier: Rep. Boehning

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



**REPORT OF STANDING COMMITTEE (410)**  
January 14, 2009 3:56 p.m.

**Module No: HR-07-0346**  
**Carrier: Boehning**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1108: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS**  
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1108 was placed on the  
Eleventh order on the calendar.

2009 SENATE JUDICIARY

HB 1108

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1108

Senate Judiciary Committee

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Hearing Date: 2/16/09

Recorder Job Number: 9554

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

**Relating to the right to counsel under the Juvenile Court Act.**

**Jean Delaney** – ND Commission on Legal Counsel for Indigents – See written testimony.

**Senator Olafson** – Said he already thought we did things this way.

**Delaney** – Under the Juvenile Court Act a child includes a person under the age of 20 with

respect to a delinquent act committed while under the age of 18, occasionally you have a

person over 18 in Juvenile Court. The general practice is to look at that person's income

instead of the parents but under the statute it says the eligibility of the child is determined by

the parent's income. This brings the law into line with the practice.

Close the hearing

**Senator Lyson** motions do pass

**Senator Fiebiger** seconds

Vote – 6-0

**Senator Nething** will carry

Date: 4/10  
Roll Call Vote #: 1188

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen. Lyson Seconded By Sen. Fiebiger

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	X		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson – V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) \_\_\_\_\_ (N) \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Sen. Nething

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

**REPORT OF STANDING COMMITTEE (410)**  
February 16, 2009 12:50 p.m.

**Module No: SR-30-2881**  
**Carrier: Nething**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1108: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1108 was placed on the  
Fourteenth order on the calendar.

2009 TESTIMONY

HB 1108

*Attachment*

*1108*

**HB 1108**  
**Senate Judiciary Committee**  
**February 16, 2009**  
**Testimony of H. Jean Delaney**  
**North Dakota Commission on Legal Counsel for Indigents**

House Bill 1108 deals with the right to counsel under the Juvenile Court Act. This bill provides that counsel does not have to be provided for a child who is aged 18 or older – this bill permits the child to waive his/her right to counsel.

This bill provides that the determination of eligibility for indigent defense services for a child who is age 18 or older, will be based upon the child's own financial situation.

This bill also clarifies that both parents, whether custodial or not, are responsible for the costs of representation for their child who is under the age of 18, and both parents' financial situations will be examined to determine eligibility for indigent defense services. As the statute is presently written, it is unclear if a non-custodial parent's financial situation is examined to determine eligibility.

Finally, this bill defines "party" for purposes of the right to counsel, as "the child, and the child's parent, legal guardian, or custodian" – those persons traditionally thought of as parties in juvenile court proceedings.

*Same  
testimony given  
to House*