

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1108
(Representative DeKrey)
(Senator Lyson)

(At the request of the Commission on Legal Counsel for Indigents)

AN ACT to amend and reenact section 27-20-26 of the North Dakota Century Code, relating to the right to counsel under the Juvenile Court Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-20-26 of the North Dakota Century Code is amended and reenacted as follows:

27-20-26. Right to counsel - Exceptions.

1. Except as otherwise provided in this section, a party who is indigent and unable to employ legal counsel is entitled to counsel at public expense at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. During the informal adjustment stage of a proceeding only the child, if determined to be indigent, is entitled to counsel at public expense. In proceedings regarding allegations of unruliness or delinquency, a child's parent, legal guardian, or custodian, if determined to be indigent, is entitled to counsel at public expense only during the dispositional stage of the proceedings. If a party appears without counsel the court shall ascertain whether the party knows the party may be represented by counsel and that the party is entitled to counsel at public expense if indigent. The court may continue the proceeding to enable a party to obtain counsel and, subject to this section, counsel must be provided for an unrepresented indigent party upon the party's request. Counsel must be provided for a child who is under the age of eighteen years and is not represented by the child's parent, guardian, or custodian at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. If the interests of two or more parties conflict, separate counsel must be provided for each of them.
2. An indigent party is one who at the time of requesting counsel is unable, without undue financial hardship, to provide for full payment of legal counsel and all other necessary expenses for representation. A child who, at the time of the proceeding, is under the age of eighteen years is not to be considered indigent under this section if the child's parent can, without undue financial hardship, provide full payment for legal counsel and other expenses of representation. Any parent ~~entitled to the custody~~ of a child who is under the age of eighteen and is involved in a proceeding under this chapter is, unless undue financial hardship would ensue, responsible for providing legal counsel and for paying other necessary expenses of representation for the parent's child. The court may enforce performance of this duty by appropriate order.
3. For purposes of this section and section 27-20-49, "party" means the child and the child's parent, legal guardian, or custodian.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1108.

House Vote: Yeas 92 Nays 0 Absent 2

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

Secretary of State