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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. **312**

01/25/2021 Authored by Becker-Finn and Hassan

The bill was read for the first time and referred to the Committee on Judiciary Finance and Civil Law

02/15/2021 Adoption of Report: Amended and re-referred to the Committee on Human Services Finance and Policy

1.1 A bill for an act
1.2 relating to human services; child welfare; modifying requirements for
1.3 court-appointed counsel in child protection cases; requiring a report; appropriating
1.4 money; amending Minnesota Statutes 2020, section 260C.163, subdivision 3.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2020, section 260C.163, subdivision 3, is amended to read:

1.7 Subd. 3. **Appointment of counsel.** (a) The child, parent, guardian or custodian has the
1.8 right to effective assistance of counsel in connection with a proceeding in juvenile court as
1.9 provided in this subdivision.

1.10 (b) Except in proceedings where the sole basis for the petition is habitual truancy, if the
1.11 child desires counsel but is unable to employ it, the court shall appoint counsel to represent
1.12 the child who is ten years of age or older under section 611.14, clause (4), or other counsel
1.13 at public expense.

1.14 (c) ~~Except in proceedings where the sole basis for the petition is habitual truancy, if the~~
1.15 ~~parent, guardian, or custodian desires counsel but is unable to employ it, the court shall~~
1.16 ~~appoint counsel to represent the parent, guardian, or custodian in any case in which it feels~~
1.17 ~~that such an appointment is appropriate if the person would be financially unable to obtain~~
1.18 ~~counsel under the guidelines set forth in section 611.17. In all child protection proceedings~~
1.19 ~~where a child risks removal from the care of the child's parent, guardian, or custodian,~~
1.20 ~~including a child in need of protection or services petition, an action pursuing removal of~~
1.21 ~~a child from the child's home, a termination of parental rights petition, or a petition for~~
1.22 ~~permanent out-of-home placement, if the parent, guardian, or custodian desires counsel and~~
1.23 ~~is eligible for counsel under section 611.17, the court shall appoint counsel to represent~~

2.1 each parent, guardian, or custodian prior to the first hearing on the petition and at all stages
2.2 of the proceedings. Court appointed counsel shall be at county expense as outlined in
2.3 paragraph (h).

2.4 (d) In any proceeding where the subject of a petition for a child in need of protection or
2.5 services is ten years of age or older, the responsible social services agency shall, within 14
2.6 days after filing the petition or at the emergency removal hearing under section 260C.178,
2.7 subdivision 1, if the child is present, fully and effectively inform the child of the child's
2.8 right to be represented by appointed counsel upon request and shall notify the court as to
2.9 whether the child desired counsel. Information provided to the child shall include, at a
2.10 minimum, the fact that counsel will be provided without charge to the child, that the child's
2.11 communications with counsel are confidential, and that the child has the right to participate
2.12 in all proceedings on a petition, including the opportunity to personally attend all hearings.
2.13 The responsible social services agency shall also, within 14 days of the child's tenth birthday,
2.14 fully and effectively inform the child of the child's right to be represented by counsel if the
2.15 child reaches the age of ten years while the child is the subject of a petition for a child in
2.16 need of protection or services or is a child under the guardianship of the commissioner.

2.17 (e) In any proceeding where the sole basis for the petition is habitual truancy, the child,
2.18 parent, guardian, and custodian do not have the right to appointment of a public defender
2.19 or other counsel at public expense. However, before any out-of-home placement, including
2.20 foster care or inpatient treatment, can be ordered, the court must appoint a public defender
2.21 or other counsel at public expense in accordance with this subdivision.

2.22 (f) Counsel for the child shall not also act as the child's guardian ad litem.

2.23 (g) In any proceeding where the subject of a petition for a child in need of protection or
2.24 services is not represented by an attorney, the court shall determine the child's preferences
2.25 regarding the proceedings, including informing the child of the right to appointed counsel
2.26 and asking whether the child desires counsel, if the child is of suitable age to express a
2.27 preference.

2.28 (h) Court-appointed counsel for the parent, guardian, or custodian under this subdivision
2.29 is at county expense. If the county has contracted with counsel ~~meeting qualifications under~~
2.30 ~~paragraph (i),~~ the court shall appoint the counsel retained by the county, unless a conflict
2.31 of interest exists. If a conflict exists, after consulting with the chief judge of the judicial
2.32 district or the judge's designee, the county shall contract with competent counsel to provide
2.33 the necessary representation. The court may appoint only one counsel at public expense for
2.34 the first court hearing to represent the interests of the parents, guardians, and custodians,

3.1 unless, at any time during the proceedings upon petition of a party, the court determines
3.2 and makes written findings on the record that extraordinary circumstances exist that require
3.3 counsel to be appointed to represent a separate interest of other parents, guardians, or
3.4 custodians subject to the jurisdiction of the juvenile court.

3.5 ~~(i) Counsel retained by the county under paragraph (h) must meet the qualifications~~
3.6 ~~established by the Judicial Council in at least one of the following: (1) has a minimum of~~
3.7 ~~two years' experience handling child protection cases; (2) has training in handling child~~
3.8 ~~protection cases from a course or courses approved by the Judicial Council; or (3) is~~
3.9 ~~supervised by an attorney who meets the minimum qualifications under clause (1) or (2).~~

3.10 **EFFECTIVE DATE.** This section is effective July 1, 2022.

3.11 Sec. 2. **APPROPRIATIONS.**

3.12 (a) \$520,000 in fiscal year 2022 and \$520,000 in fiscal year 2023 are appropriated from
3.13 the general fund to the commissioner of human services for costs related to court-appointed
3.14 counsel in child protection proceedings pursuant to Minnesota Statutes, section 260C.163,
3.15 subdivision 3. The commissioner shall distribute funds to counties that do not currently
3.16 provide court-appointed counsel to all parents, guardians, or custodians who qualify for
3.17 court-appointed counsel at emergency protective care hearings for reimbursement of costs
3.18 related to providing this counsel.

3.19 (b) \$...... in fiscal year 2022 is appropriated from the general fund to the commissioner
3.20 of human services to assist counties with implementing the requirements of Minnesota
3.21 Statutes, section 260C.163, subdivision 3, and title IV-E reimbursement, including staffing
3.22 and statewide data collection. Data to be collected includes but is not limited to:

3.23 (1) data documenting the presence of court-appointed counsel for qualifying parents,
3.24 guardians, or custodians at each emergency protective hearing;

3.25 (2) total annual court-appointed parent representation expenditures for each county; and

3.26 (3) additional demographic information that would assist counties in obtaining title IV-E
3.27 reimbursement.

3.28 The commissioner must complete and submit a report on the data in this section and efforts
3.29 to assist counties with implementation to the chairs and ranking minority members of the
3.30 legislative committees with jurisdiction over human services and judiciary policy and finance
3.31 on or before July 1, 2022. This is a onetime appropriation.