

PROPOSED AMENDMENTS TO SENATE BILL NO. 2027

Page 1, line 2, replace "section" with "sections 14-07.1-05.1, 14-09-06.3, 14-09-06.4, 14-17-15, 25-03.1-13, 25-03.3-09, and"

Page 1, line 4, after the first "to" insert "indigent defense services for mental illness commitment proceedings, civil commitment of sexual predators, guardian ad litem services, and"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Section 14-07.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**14-07.1-05.1. Appointment of guardian ad litem for minor.** The court, upon the request of either party or upon its own motion, may appoint a guardian ad litem in an action for a protection order to represent a minor concerning custody, support, or visitation if either party or the court has reason for special concern as to the immediate future of the minor. The guardian ad litem may be appointed at the time of a temporary protection order or at any time before the full hearing. The role of the guardian ad litem consists of investigation and making a recommendation and report to the court. At no time may the involvement of the guardian ad litem alter the requirements set forth in section 14-07.1-03. The appointment of the guardian ad litem expires immediately after the full hearing unless the court retains the right, upon specific finding of need, to continue the appointment of a guardian ad litem to participate in visitation. The guardian ad litem shall have access to records before the court except as otherwise provided by law. The court may direct either or both parties to pay the guardian ad litem fees established by the court. If neither party is able to pay the fees, the court, ~~after notice to the state's attorney of the county of venue,~~ may direct the fees to be paid, in whole or in part, by the ~~county of venue~~ supreme court. The court may direct either or both parties to reimburse the ~~county~~ state, in whole or in part, for the payment.

**SECTION 2. AMENDMENT.** Section 14-09-06.3 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-06.3. Custody investigations and reports - Costs.**

1. In contested custody proceedings the court may, upon the request of either party, or, upon its own motion, order an investigation and report concerning custodial arrangements for the child. The court shall designate a person or agency responsible for making the investigation and report, which designees may include the county social service board, public health officer, school officials, and any other public agency or private practitioner it deems qualified to make the investigation.
2. The investigator may consult any person who may have information about the child and any potential custody arrangements, and upon order of the court may refer the child to any professional personnel for diagnosis.
3. The court shall mail the investigator's report to counsel and to any party not represented by counsel at least thirty days before the hearing. The investigator shall make available to any such counsel or party the complete file of data and reports underlying the investigator's report and the names and addresses of all persons whom the investigator has consulted. A party may call the investigator and any person whom the investigator has

consulted for cross-examination at the hearing. A party may not waive the party's right of cross-examination before the hearing.

4. The court shall enter an order for the costs of any such investigation against either or both parties, except that if the parties are indigent the expenses must be borne by the ~~county~~ supreme court.

**SECTION 3. AMENDMENT.** Section 14-09-06.4 of the North Dakota Century Code is amended and reenacted as follows:

**14-09-06.4. Appointment of guardian ad litem or child custody investigator for children in custody, support, and visitation proceedings - Immunity.** In any action for an annulment, divorce, legal separation, or other action affecting marriage, when either party has reason for special concern as to the future of the minor children, and in any action when the custody or visitation of children is contested, either party to the action may petition the court for the appointment of a guardian ad litem to represent the children concerning custody, support, and visitation. The court, in its discretion, may appoint a guardian ad litem or child custody investigator on its own motion. If appointed, a guardian ad litem shall serve as an advocate of the children's best interests. If appointed, the child custody investigator shall provide those services as prescribed by the supreme court. The court may direct either or both parties to pay the guardian ad litem or child custody investigator fee established by the court. If neither party is able to pay the fee, the court may direct the fee to be paid, in whole or in part, by the ~~county of venue~~ supreme court. The court may direct either or both parties to reimburse the ~~county~~ state, in whole or in part, for such payment. Any guardian ad litem or child custody investigator appointed under this section who acts in good faith in making a report to the court is immune from any civil liability resulting from the report. For the purpose of determining good faith, the good faith of the guardian ad litem or child custody investigator is a disputable presumption.

**SECTION 4. AMENDMENT.** Section 14-17-15 of the North Dakota Century Code is amended and reenacted as follows:

**14-17-15. Costs.** The court may order reasonable fees of experts and the child's guardian ad litem and other costs of the action and pretrial proceedings, including genetic tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by the ~~county social service board of the county in which the child resides or is found~~ state. In addition, the court may award reasonable attorney's fees if an award is permitted under chapter 28-26.

**SECTION 5. AMENDMENT.** Section 25-03.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-13. Right to counsel - Indigency - Waiver - Recoupment - Limitations.**

1. Every respondent under this chapter is entitled to legal counsel. The counsel has access to the respondent's medical records upon proof of representation.
2. Unless an appearance has been entered on behalf of the respondent, the court shall, within twenty-four hours, exclusive of weekends or holidays, from the time the petition was filed, appoint counsel to represent the respondent. If a respondent retains counsel, the retained counsel shall immediately notify the court of that fact.
3. If, after consultation with counsel, the respondent wants to waive the right to counsel or the right to any of the hearings provided for under this chapter, the respondent may do so by notifying the court in writing. The

notification must clearly state the respondent's reasons for the waiver and must also be signed by counsel.

4. If the court determines that the respondent is indigent, the court shall order that appointed counsel be ~~compensated from county funds of the county that is the respondent's place of residence in a reasonable amount based upon time and expenses provided by the commission on legal counsel for indigents~~. After notice and hearing, the court may order a respondent with appointed counsel to reimburse the county state for expenditures made on the respondent's behalf.
5. If the state's attorney of a the county that ~~has expended sums under subsection 4 on behalf of a respondent who is liable to reimburse the county is the respondent's place of residence~~ determines that the respondent may have funds or property to reimburse the county state, the state's attorney shall seek civil recovery of those sums. Commencement of the action must occur within six years after the date the sums were paid.

**SECTION 6. AMENDMENT.** Section 25-03.3-09 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.3-09. Right to counsel - Waiver.**

1. Every respondent is entitled to legal counsel. Unless an appearance has been entered on behalf of the respondent, the court, within twenty-four hours from the time the petition was filed, exclusive of weekends or holidays, shall appoint counsel to represent the respondent. If a respondent retains counsel, the retained counsel immediately shall notify the court of that fact.
2. After consultation with counsel, the respondent may waive the right to counsel or the right to any hearing provided pursuant to this chapter by notifying the court in writing. The notification must clearly state the respondent's reasons for the waiver and the respondent's counsel shall separately certify that counsel has explained to the respondent the proceedings, the legal and factual issues, potential defenses, the burden of proof, and possible outcomes of the proceedings. No guardian, guardian ad litem, attorney, or other individual may waive the right to counsel on behalf of an individual with mental retardation.
3. If the court determines that the respondent is indigent, the court shall ~~appoint counsel and order that appointed counsel be compensated by the county that is the respondent's place of residence in a reasonable amount based upon time and expenses provided by the commission on legal counsel for indigents~~.
4. The state's attorney of a the county that ~~has expended sums pursuant to subsection 3~~ is the respondent's county of residence may seek civil recovery of those sums from property of the respondent. Commencement of the action must occur within six years after the date the sums were paid. After notice and hearing, the court may order an individual to reimburse the county state for expenditures made on that individual's behalf pursuant to this chapter."

Page 8, line 23, replace "10" with "16 of this Act"

Page 8, line 27, replace "5" with "11" and replace "7" with "13"

Renumber accordingly