

March 22, 2021

Senator Diane Larson, Chairman
Judiciary Committee
North Dakota Senate

RE: House Bill 1035, Concerning the Appointment of Counsel for Youth in Dependency Court Proceedings

Dear Chair Larson and Committee,

The [National Association of Counsel for Children](#) (NACC) strongly supports HB 1035. Founded in 1977, NACC's mission is to advance the rights, well-being, and opportunities of children impacted by the child welfare system through access to high-quality legal representation. Comprised of child welfare professionals across the country, NACC led the evolution of children's law from a cause to a profession by establishing child welfare law as a specialty practice requiring distinctive training, skill, and support.

There is national consensus that children require independent legal representation throughout dependency proceedings – a consensus propelled by research, endorsed by the federal government, and implemented in 32 states across the country. HB 1035 would change existing law to require North Dakota to provide this fundamental due process protection to children and youth in crisis.

Appointing legal counsel to children has been studied and evaluated for efficacy. [Research](#) conducted by Chapin Hall at the University of Chicago determined that children assigned lawyers exited foster care at significantly faster rates and with more individualized case plans than children who did not have lawyers. These results were affirmed through the 6-year, federally funded [QIC-ChildRep study](#), which found that children represented by specially trained legal counsel were 40% more likely to exit foster care within their first six months.

These studies have been relied upon by the U.S. Children's Bureau (CB), the federal agency responsible for child protection, to inform its policies and recommendations. In 2017, the Children's Bureau issued an [Information Memorandum](#) that encouraged the appointment of high-quality child attorneys as "critical to a well-functioning child welfare system." The guidance noted that legal representation for children contributes to improved outcomes, including cost savings to state government due to expedited permanency; increases in party perceptions of fairness; increases in party engagement in case planning, services and court hearings; more personally tailored and specific case plans and services; and increases in visitation and parenting time.

Consistent with these recommendations, the American Bar Association's (ABA) [Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings](#) and the National Council of Juvenile and Family Court Judges' [Enhanced Resource Guidelines](#) advocate that children subject to court proceedings involving allegations of abuse and neglect should have legal representation throughout the case.

– Based in Denver, CO and Washington, DC –

To invest in the efficacy of high-quality legal representation, in 2018 the Children’s Bureau (CB) changed longstanding policy to open federal entitlement funding to support legal representation of children and parents. Today, states can claim federal dollars through child protection agencies to be allocated to children’s attorneys and their support staff – just as they would for other essential members of the child welfare workforce, like caseworkers. In January, the CB issued another [Memorandum](#) urging systems to ensure legal representation at all stages of child welfare proceedings and to maximize allowable administrative reimbursement.

Jurisdictions throughout North Dakota currently offer children the support of lay guardians ad litem. Lay advocates can play an important supporting role to the court, but they are not a substitute for legal representation. They cannot render legal advice nor can they employ litigation techniques (ex. presenting evidence, filing motions, or questioning witnesses) to advance the goals, needs, and legal interests of a child. Attorneys and lay advocates can and do serve their distinct and complementary roles simultaneously --both roles require training, standards, oversight, and support. This bill does not and should not present a binary choice between attorneys and lay advocates for children.

From infants, to school-aged children, to teens, legal representation is the best practice. Guidelines for legal representation along the developmental continuum have existed for 25 years and are included in the ABA Model Rules of Professional Conduct, ABA Standards of Practice for Lawyers Who Represent Children in Child Abuse and Neglect Cases, and NACC Revised Standards. Without attorneys, the quality of hearings is undermined and judicial officers are hindered from having comprehensive information before making decisions.

We often hear said that youth are the most important party to a child protection case, but currently they are the only party that does not consistently have access to counsel. North Dakota youth are overdue for due process – a right to be heard and treated as an equal and essential part of their own case. With new federal funding, a strong body of evidence, and North Dakota’s commitment to improving the lives of children in foster care, the timing to pass HB 1035 is now.

We urge your support for this proposal and are available to answer any questions you have. Thank you for your consideration.

Sincerely,



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