

HB 651-FN-A – AS INTRODUCED

2013 SESSION

13-0337
09/10

HOUSE BILL ***651-FN-A***

AN ACT restoring funding and payment of fees by the judicial council for indigent parties.

SPONSORS: Rep. Horrigan, Straf 6; Rep. Coulombe, Coos 3

COMMITTEE: Children and Family Law

ANALYSIS

This bill restores funding and payment of fees by the judicial council for indigent parties.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT restoring funding and payment of fees by the judicial council for indigent parties.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Subparagraph; Special Fund. Amend RSA 6:12, I(b) by inserting after subparagraph 310
2 the following new subparagraph:

3 (311) All moneys collected pursuant to RSA 461-A:7, X, which shall be deposited into
4 the special fund for mediator and guardian ad litem services.

5 2 Payment of Mediator Fees by Indigent Parties. RSA 461-A:7, X is repealed and reenacted to
6 read as follows:

7 X. In the event both parties are indigent, the mediator shall be paid a set fee for his or her
8 services. The amount of the fee shall be set annually by supreme court rule. The court may order
9 each party to pay a proportional amount of said fee. The fee shall be paid from the special fund
10 established pursuant to RSA 461-A:17 and repaid by the parties in accordance with RSA 461-A:18.

11 3 Guardian Ad Litem Fees. Amend RSA 461-A:16, IV to read as follows:

12 IV. The fees for services for the guardian ad litem and others utilized by the guardian and
13 approved by the court shall be a charge against the parties in a proportional amount as the court
14 may determine. ***Where the parties are indigent, compensation for guardians ad litem and***
15 ***others utilized by the guardian and approved by the court shall be based upon the***
16 ***applicable fee schedule established by the supreme court for indigent defense counsel.***

17 4 Parental Rights and Responsibilities. Amend the introductory paragraph of RSA 461-A:16, VI
18 to read as follows:

19 VI. The supreme court shall provide the following relative to [~~non-certified~~] guardians ad
20 litem appointed pursuant to this section:

21 5 Guardians Ad Litem and Mediators; Liability for Expenses. RSA 461-A:17 is repealed and
22 reenacted to read as follows:

23 461-A:17 Special Fund Established. The supreme court shall establish a separate fund in which
24 to deposit a percentage of the entry fee paid to each clerk of court with each petition in domestic
25 relations cases for the compensation of mediators, appointed pursuant to RSA 461-A:7, and
26 guardians ad litem, appointed pursuant to RSA 461-A:16, when the parents are indigent. The
27 supreme court shall determine by rule the percentage amount of the entry fee for each petition to be
28 deposited into the fund, but at no time shall the percentage amount exceed 50 percent of the entry
29 fee for each petition. Payments for services provided shall be paid by the judicial council.

30 6 Mediation and Arbitration Fund. Amend RSA 490-E:4, I(a) to read as follows:

31 (a) All moneys collected pursuant to [~~RSA 461-A:7, X,~~] RSA 490:27, II, RSA 490-D:12, III,

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1 RSA 503:4, II, and RSA 502-A:28, III.

2 7 Child Protection Act; Liability of Expenses. Amend RSA 169-C:27, I(f) to read as follows:

3 (f) ~~Neither~~ **Notwithstanding any provision of law to the contrary**, the department
4 ~~[nor the judicial council]~~ shall have ~~[authority]~~ **no responsibility** for the payment of the cost of
5 assigned counsel for any party under this chapter.

6 8 Adequate Representation Costs. Amend RSA 604-A:1-a to read as follows:

7 604-A:1-a Neglected or Abused Children. In cases involving a neglected or abused child, when a
8 guardian ad litem is appointed for the child as provided in RSA 169-C:10, the cost of such
9 appointment shall be paid from funds appropriated for indigent defense pursuant to this chapter. **In**
10 **cases involving a neglected or abused child, when an attorney is appointed to represent a**
11 **parent determined to be indigent pursuant to RSA 169-C:10, II, the cost of such**
12 **appointment shall be paid from funds appropriated for indigent defense pursuant to this**
13 **chapter.**

14 9 Child Protection Act; Guardians Ad Litem. Amend RSA 169-C:10, I to read as follows:

15 I. In cases brought pursuant to this chapter involving a neglected or abused child, the court
16 shall appoint a **guardian ad litem or** Court Appointed Special Advocate (CASA) ~~[or other approved~~
17 ~~program]~~ guardian ad litem for the child. ~~[If a CASA or other approved program guardian ad litem~~
18 ~~is unavailable for appointment, the court may then appoint an attorney or other guardian ad litem as~~
19 ~~the guardian ad litem for the child.]~~ The court shall not appoint an attorney for any guardian ad
20 litem appointed for the child **but may appoint an attorney or any other qualified individual as**
21 **the guardian ad litem for the child.** The CASA ~~[or other approved program guardian ad litem]~~
22 shall have the same authority and access to information as any other guardian ad litem. ~~[For~~
23 ~~purposes of this paragraph, “unavailable for appointment” means that there is no CASA or other~~
24 ~~approved program guardian ad litem available for appointment by the court following a finding of~~
25 ~~reasonable cause at the preliminary hearing held under RSA 169-C:15 so that the child’s interests~~
26 ~~may effectively be represented in preparation for and at an adjudicatory hearing.]~~

27 10 Child Protection Act; Preliminary Hearing. Amend RSA 169-C:15, III(a) to read as follows:

28 (a) Appoint ~~[a CASA or other approved program guardian ad litem or]~~ an attorney ~~[or~~
29 ~~other qualified guardian ad litem]~~ to represent the child pursuant to RSA 169-C:10.

30 11 Child Protection Act; Appointment of Counsel. Amend RSA 169-C:10, II(a) to read as follows:

31 (a) In cases involving a neglected or abused child under this chapter, where the child’s
32 expressed interests conflict with the recommendation for dispositional orders of the guardian ad
33 litem, the court may appoint an attorney to represent the interests of the child. **In any case of**
34 **neglect or abuse brought pursuant to this chapter, the court shall appoint an attorney to**
35 **represent an indigent parent alleged to have neglected or abused his or her child. In**
36 **addition, the court may appoint an attorney to represent an indigent parent not alleged to**
37 **have neglected or abused his or her child if the parent is a household member and such**

1 *independent legal representation is necessary to protect the parent's interest. The court*
2 *shall not appoint an attorney to represent any other persons involved in a case brought*
3 *under this chapter.*

4 12 Termination of Parental Rights. Amend RSA 170-C:13 to read as follows:

5 170-C:13 Fees and Court Costs.

6 [~~I. The petitioner shall pay~~] All entry fees and court costs including costs of giving notice,
7 [~~costs of~~] advertising, and court-appointed guardian ad litem fees ***shall be paid by the petitioner.***
8 The court, however, may waive entry fees and court costs where payment would work a hardship on
9 the petitioner. Where the court waives payment by the petitioner, the state, through the court
10 system, shall pay court costs ***and the fee of any court-appointed guardian ad litem.*** [~~The~~
11 ~~judicial council shall pay the cost of a CASA guardian ad litem appointed for the child or other~~
12 ~~guardian ad litem in cases arising from an underlying abuse and neglect proceeding when the state~~
13 ~~is the moving party or in cases where payment would work a hardship on the petitioner.~~

14 H.] The department of health and human services is exempted from paying any entry fees
15 and court costs.

16 [~~III. When appointment of counsel is made by the court pursuant to RSA 170-C:10 for a~~
17 ~~parent determined to be financially unable to employ counsel, the court shall use a financial~~
18 ~~eligibility guideline established by the office of cost containment to determine if the party is indigent.~~
19 ~~Upon determination that the party is indigent, the court may appoint counsel, subject to an order of~~
20 ~~repayment through the office of cost containment. The judicial council shall bear no financial~~
21 ~~responsibility for the payment of appointed attorney costs in such cases where the state is not the~~
22 ~~moving party for the termination of parental rights. The court shall pay for the appointment of~~
23 ~~counsel for an indigent parent made in accordance with the financial eligibility guideline established~~
24 ~~by the office of cost containment.]~~

25 13 Effective Date. This act shall take effect July 1, 2013.

HB 651 FISCAL NOTE

AN ACT restoring funding and payment of fees by the judicial council for indigent parties.

FISCAL IMPACT:

The Judicial Branch and the Judicial Council state this bill, **as introduced**, will increase state expenditures by an indeterminable amount in FY 2014 and each fiscal year thereafter. There will be no fiscal impact on state, county, and local revenues, or county and local expenditures.

METHODOLOGY:

The Judicial Branch and the Judicial Council state this bill restores: the state payment of fees for guardians ad litem in domestic cases; the obligation of the Judicial Council to pay for counsel assigned to represent indigent parents in abuse and neglect proceedings; and attorneys and guardians ad litem in termination of parental right cases for parents determined to be indigent. The Judicial Branch states the provisions of the proposed legislation establishing “...*compensation for guardians ad litem and others utilized by the guardian and approved by the court shall be based upon the applicable fee schedule established by the Supreme Court for indigent defense counsel*” for parties in domestic relation cases also redirects funds currently directed to the mediation and arbitration fund to a separate special fund established by the proposed legislation. The Branch estimates this provision would redirect approximately \$264,171 from the mediation and arbitration fund to the separate special fund established in the bill in FY 2014 and each fiscal year thereafter.

The Branch states the provisions of the proposed legislation requiring the Judicial Council to pay for counsel assigned to represent indigent parents in abuse and neglect proceedings represents a reversal of changes made to statute in 2011. The Branch notes the 2011 legislative change was challenged and the Supreme Court ruled the state was obligated to make “a determination of whether appointed counsel is necessary to adequately reduce the risk of erroneous deprivation”. Since that ruling, the Branch states they have been paying the cost of assigned council for indigent parents in abuse and neglect cases. Although the proposed legislation assigns this financial responsibility to the Judicial Council, the Branch states their budgetary estimate of the costs of providing counsel to indigent parents in abuse and neglect cases for FY 2014 and FY 2015 is \$600,000 per fiscal year. Accordingly, the Branch estimates this provision of the proposed legislation will reduce Branch expenditures by \$600,000 in FY 2014 and each fiscal year thereafter.

Based on FY 2010 data, the Judicial Council estimates the requirement to provide compensation for guardians ad litem and others utilized by the guardian and approved by the court for indigent parties in domestic relation cases would increase state expenditures by \$1,160,000 in FY 2014 and each fiscal year thereafter. The Council also estimates the reestablishment of the requirement to provide counsel to represent indigent parents in abuse and neglect proceedings will increase Council expenditures by \$1,200,000 in FY 2014. The Council believes by working in conjunction with the Judicial Branch various methods of reducing these costs including such things as the establishment of fixed fee contracts and rigorous enforcement of fee caps could be devised. However, the Council is unable to estimate to what extent these measures would reduce the estimated expenditures of \$1,200,000 in FY 2015 and each fiscal year thereafter.

The Council also notes the proposed legislation removes the statutory requirement for the court to first seek to appoint a Court Appointed Special Advocate (CASA) volunteer prior to the assignment of a certified guardian ad litem and instead allows the court to appoint either a CASA volunteer or a certified guardian ad litem at their own discretion. The Council notes to the extent the courts appoint certified guardians ad litem over CASA volunteers state expenditures would increase. The Council is unable to estimate to what extent this provision of the proposed legislation would increase state expenditures. The Judicial Council also estimates it would require the addition of one account technician to handle the increased workload associated with processing payments for counsel appointed to indigent parents for abuse and neglect matters, guardians ad litem appointed in domestic relations cases, and mediators in domestic relations cases. The Council states the addition of an account technician would increase state expenditures by \$47,623 in FY 2014 and each fiscal year thereafter.

This bill does not contain an appropriation or authorize any additional positions.