

HB 671-FN – AS AMENDED BY THE HOUSE

6Mar2013... 0431h
6Mar2013... 0564h

2013 SESSION

13-0420
09/04

HOUSE BILL **671-FN**

AN ACT restoring state payment of fees for attorneys in child abuse and neglect cases where the parents are indigent.

SPONSORS: Rep. Coulombe, Coos 3; Rep. Horrigan, Straf 6; Rep. Gale, Hills 28

COMMITTEE: Children and Family Law

AMENDED ANALYSIS

This bill restores state payment of fees for attorneys in child abuse and neglect cases where the parents are indigent.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT restoring state payment of fees for attorneys in child abuse and neglect cases where the parents are indigent.

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

1 1 Child Protection Act; Liability of Expenses. Amend RSA 169-C:27, I(f) to read as follows:

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

5 2 Adequate Representation Costs. Amend RSA 604-A:1-a to read as follows:

6 604-A:1-a Neglected or Abused Children. In cases involving a neglected or abused child, when a
7 guardian ad litem is appointed for the child as provided in RSA 169-C:10, the cost of such
8 appointment shall be paid from funds appropriated for indigent defense pursuant to this chapter. ***In***
9 ***cases involving a neglected or abused child, when an attorney is appointed to represent a***
10 ***parent determined to be indigent pursuant to RSA 169-C:10, II, at the preliminary hearing***
11 ***or a hearing pursuant to RSA 169-C:6-a, III, whichever occurs earlier, the cost of such***
12 ***appointment shall be paid from funds appropriated for indigent defense pursuant to this***
13 ***chapter.***

14 3 Child Protection Act; Preliminary Hearing. Amend RSA 169-C:15, III(a) to read as follows:

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

17 4 Child Protection Act; Appointment of Counsel. Amend RSA 169-C:10, II(a) to read as follows:

18 (a) In cases involving a neglected or abused child under this chapter, where the child's
19 expressed interests conflict with the recommendation for dispositional orders of the guardian ad
20 litem, the court may appoint an attorney to represent the interests of the child. ***In any case of***
21 ***neglect or abuse brought pursuant to this chapter, the court shall appoint an attorney to***
22 ***represent an indigent parent alleged to have neglected or abused his or her child. In***
23 ***addition, the court may appoint an attorney to represent an indigent parent not alleged to***
24 ***have neglected or abused his or her child if the parent is a household member and such***
25 ***independent legal representation is necessary to protect the parent's interest. The court***
26 ***shall not appoint an attorney to represent any other persons involved in a case brought***
27 ***under this chapter.***

28 5 Effective Date. This act shall take effect July 1, 2013.

LBAO
13-0420
Amended 03/18/13
Revised 09/17/13

HB 671 FISCAL NOTE

AN ACT restoring state payment of fees for attorneys in child abuse and neglect cases where the parents are indigent.

FISCAL IMPACT:

The Judicial Council states this bill, **as amended by the House (Amendment #2013-0431h and #2013-0564h)**, 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.

The Office of Legislative Budget Assistant is awaiting information from the Judicial Branch relative to the potential fiscal impact of this bill as amended by the House (Amendment #2013-0431h and #2013-0564h). The Branch was initially contacted on 03/11/13 and most recently contacted on 08/23/13.

METHODOLOGY:

The Judicial Council states this bill restores the statutory right to the assistance of appointed counsel, at the State's expense, for all indigent parents alleged to have neglected or abused their children. Based on FY 2010 costs associated with the provision of counsel assigned to represent indigent parents in abuse and neglect proceedings, the Judicial Council estimates the reestablishment of this right will increase Judicial 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 2014 and each fiscal year thereafter.

The Judicial Branch provided the following comments to similar sections contained in the bill as introduced. The Branch noted the 2011 legislative change to not have the state pay the cost of representation of indigent parents in abuse and neglect proceedings 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 stated they had 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 stated 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.