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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1064

02/11/2019 Authored by Kresha The bill was read for the first time and referred to the Judiciary Finance and Civil Law Division

1.1 A bill for an act
1.2 relating to children; modifying appointment of counsel in juvenile court; amending
1.3 Minnesota Statutes 2018, section 260C.163, subdivisions 3, 10.

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

1.5 Section 1. Minnesota Statutes 2018, section 260C.163, subdivision 3, is amended to read:

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

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

1.13 (c) Except in proceedings where the sole basis for the petition is habitual truancy, if the
1.14 parent, guardian, or custodian desires counsel but is unable to employ it, the court shall
1.15 appoint counsel to represent the parent, guardian, or custodian in any case in which it feels
1.16 that such an appointment is appropriate if the person would be financially unable to obtain
1.17 counsel under the guidelines set forth in section 611.17. Court appointed counsel shall be
1.18 at county expense as outlined in paragraph (h).

1.19 (d) In any proceeding where the subject of a petition for a child in need of protection or
1.20 services is ten years of age or older, the responsible social services agency shall, ~~within 14~~
1.21 ~~days after filing the petition or~~ at the emergency removal hearing under section 260C.178,
1.22 subdivision 1, ~~if the child is present, fully and effectively~~ or no later than the admit-deny

2.1 hearing pursuant to Rule 34 of the Minnesota Rules of Juvenile Protection Procedure,
2.2 inform the child of the child's right to be represented by appointed counsel upon request
2.3 and shall notify the court as to whether the child ~~desired~~ does or does not desire counsel.

2.4 The agency is not required to inform the child of the right to be represented by appointed
2.5 counsel if the court has already appointed counsel to represent the child. Information provided
2.6 to the child shall include, at a minimum, the fact that counsel will be provided without
2.7 charge to the child, that the child's communications with counsel are confidential, and that
2.8 the child has the right to participate in all proceedings on a petition, including the opportunity
2.9 to personally attend all hearings. The responsible social services agency shall also, ~~within~~
2.10 ~~14 days of the child's tenth birthday, fully and effectively~~ inform the child of the child's
2.11 right to be represented by counsel no later than the first court hearing after the child's tenth
2.12 birthday, if the child reaches the age of ten years while the child is the subject of a petition
2.13 for a child in need of protection or services or is a child under the guardianship of the
2.14 commissioner.

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

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

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

2.26 (h) Court-appointed counsel for the parent, guardian, or custodian under this subdivision
2.27 is at county expense. If the county has contracted with counsel meeting qualifications under
2.28 paragraph (i), the court shall appoint the counsel retained by the county, unless a conflict
2.29 of interest exists. If a conflict exists, after consulting with the chief judge of the judicial
2.30 district or the judge's designee, the county shall contract with competent counsel to provide
2.31 the necessary representation. The court may appoint only one counsel at public expense for
2.32 the first court hearing to represent the interests of the parents, guardians, and custodians,
2.33 unless, at any time during the proceedings upon petition of a party, the court determines
2.34 and makes written findings on the record that extraordinary circumstances exist that require

3.1 counsel to be appointed to represent a separate interest of other parents, guardians, or
3.2 custodians subject to the jurisdiction of the juvenile court.

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

3.8 Sec. 2. Minnesota Statutes 2018, section 260C.163, subdivision 10, is amended to read:

3.9 Subd. 10. **Waiver.** (a) Waiver of any right which a child has under this chapter must be
3.10 an express waiver made voluntarily, intelligently, and in writing by the child after the child
3.11 has been fully and effectively informed of the right to counsel and after consulting with an
3.12 appointed attorney.

3.13 (b) Waiver of a child's right to be represented by counsel provided ~~under the juvenile~~
3.14 ~~court rules~~ in subdivision 3, paragraph (b), must be an express waiver made voluntarily,
3.15 intelligently, and on the record in writing by the child after the child has been ~~fully and~~
3.16 ~~effectively~~ informed of the right being waived by the responsible social services agency
3.17 ~~and in accordance with subdivision 3, paragraph (d)~~, or after consultation with an appointed
3.18 attorney. In determining whether a child has voluntarily and intelligently waived the right
3.19 to counsel, the court shall look to the totality of the circumstances which includes but is not
3.20 limited to the child's age, maturity, intelligence, education, experience, and ability to
3.21 comprehend, and the presence and competence of the child's parents, guardian, or guardian
3.22 ad litem. The court shall not permit the child's parent, other person legally responsible for
3.23 the child's care, or the child's guardian ad litem to waive the child's right to be represented
3.24 by counsel. If the court accepts the child's waiver, it shall state on the record the findings
3.25 and conclusions that form the basis for its decision to accept the waiver.

3.26 (c) A child may revoke a waiver under this section at any time in any juvenile protection
3.27 proceeding listed in section 260C.001, subdivision 1, paragraph (b).