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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 1702

- 02/27/2017 Authored by Kresha, Thissen, Omar, Lohmer, Ward and others
The bill was read for the first time and referred to the Committee on Civil Law and Data Practices Policy
- 03/13/2017 Adoption of Report: Amended and re-referred to the Committee on Public Safety and Security Policy and Finance
- 03/16/2017 Adoption of Report: Placed on the General Register
Read for the Second Time
- 04/27/2017 Calendar for the Day, Amended
Read Third Time as Amended
Passed by the House as Amended and transmitted to the Senate to include Floor Amendments
- 05/12/2017 Returned to the House as Amended by the Senate
The House concurred in the Senate Amendments and repassed the bill as Amended by the Senate

1.1 A bill for an act

1.2 relating to juvenile justice; children 10 and over informed of the right to counsel;

1.3 extended representation; waivers of counsel required in writing; notice to counsel

1.4 required; amending Minnesota Statutes 2016, sections 260C.163, subdivisions 3,

1.5 10; 260C.607, subdivision 2.

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

1.7 Section 1. Minnesota Statutes 2016, section 260C.163, subdivision 3, is amended to read:

1.8 Subd. 3. **Appointment of counsel.** (a) The child, parent, guardian or custodian has the

1.9 right to effective assistance of counsel in connection with a proceeding in juvenile court as

1.10 provided in this subdivision.

1.11 (b) Except in proceedings where the sole basis for the petition is habitual truancy, if the

1.12 ~~child, parent, guardian, or custodian~~ desires counsel but is unable to employ it, the court

1.13 shall appoint counsel to represent the child who is ten years of age or older under section

1.14 611.14, clause (4), or other counsel at public expense.

1.15 (c) Except in proceedings where the sole basis for the petition is habitual truancy, if the

1.16 parent, guardian, or custodian desires counsel but is unable to employ it, the court shall

1.17 appoint counsel to represent the parent, guardian, or custodian in any case in which it feels

1.18 that such an appointment is appropriate if the person would be financially unable to obtain

1.19 counsel under the guidelines set forth in section 611.17. Court appointed counsel shall be

1.20 at county expense as outlined in paragraph (h).

1.21 ~~(e)~~ (d) In any proceeding where the subject of a petition for a child in need of protection

1.22 or services is ten years of age or older, the responsible social services agency shall, within

1.23 14 days after filing the petition or at the emergency removal hearing under section 260C.178,

2.1 subdivision 1, if the child is present, fully and effectively inform the child of the child's
2.2 right to be represented by appointed counsel upon request and shall notify the court as to
2.3 whether the child desired counsel. Information provided to the child shall include, at a
2.4 minimum, the fact that counsel will be provided without charge to the child, that the child's
2.5 communications with counsel are confidential, and that the child has the right to participate
2.6 in all proceedings on a petition, including the opportunity to personally attend all hearings.
2.7 The responsible social services agency shall also, within 14 days of the child's tenth birthday,
2.8 fully and effectively inform the child of the child's right to be represented by counsel if the
2.9 child reaches the age of ten years while the child is the subject of a petition for a child in
2.10 need of protection or services or is a child under the guardianship of the commissioner.

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

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

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

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

2.33 ~~(g)~~ (i) Counsel retained by the county under paragraph ~~(f)~~ (h) must meet the qualifications
2.34 established by the Judicial Council in at least one of the following: (1) has a minimum of

3.1 two years' experience handling child protection cases; (2) has training in handling child
3.2 protection cases from a course or courses approved by the Judicial Council; or (3) is
3.3 supervised by an attorney who meets the minimum qualifications under clause (1) or (2).

3.4 Sec. 2. Minnesota Statutes 2016, section 260C.163, subdivision 10, is amended to read:

3.5 Subd. 10. **Waiver.** (a) Waiver of any right which a child has under this chapter must be
3.6 an express waiver made voluntarily and, intelligently made, and in writing by the child after
3.7 the child has been fully and effectively informed of the right ~~being waived~~ to counsel and
3.8 after consulting with an appointed attorney.

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

3.21 Sec. 3. Minnesota Statutes 2016, section 260C.607, subdivision 2, is amended to read:

3.22 Subd. 2. **Notice.** Notice of review hearings shall be given by the court to:

3.23 (1) the responsible social services agency;

3.24 (2) the child, if the child is age ten and older;

3.25 (3) the child's guardian ad litem;

3.26 (4) counsel appointed for the child pursuant to section 260C.163, subdivision 3;

3.27 (5) relatives of the child who have kept the court informed of their whereabouts as
3.28 required in section 260C.221 and who have responded to the agency's notice under section
3.29 260C.221, indicating a willingness to provide an adoptive home for the child unless the
3.30 relative has been previously ruled out by the court as a suitable foster parent or permanency
3.31 resource for the child;

- 4.1 ~~(5)~~ (6) the current foster or adopting parent of the child;
- 4.2 ~~(6)~~ (7) any foster or adopting parents of siblings of the child; and
- 4.3 ~~(7)~~ (8) the Indian child's tribe.

4.4 Sec. 4. **SHORT TITLE AND CITATION.**

- 4.5 This law may be cited as "McKenna's Law."