

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 506
PROPOSED COMMITTEE SUBSTITUTE H506-PCS30233-RK-5

Short Title: Clarify Entitlement to Counsel/Appointment.

(Public)

Sponsors:

Referred to:

March 9, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CLARIFICATIONS TO THE ENTITLEMENT TO COUNSEL AND
3 THE PROCEDURES FOR APPOINTMENT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 35A-1116 reads as rewritten:

6 "**§ 35A-1116. Costs and fees.**

7 (a) Costs. – Except as otherwise provided herein, costs shall be assessed as in special
8 proceedings. Costs, including any reasonable fees and expenses of counsel for the petitioner
9 which the clerk, in his discretion, may allow, may be taxed against either party in the discretion
10 of the court unless:

- 11 (1) The clerk finds that the petitioner did not have reasonable grounds to bring
12 the proceeding, in which case costs shall be taxed to the petitioner; or
13 (2) The respondent is indigent, in which case the costs shall be waived by the
14 clerk if not taxed against the petitioner as provided above or otherwise paid
15 as provided in subsection (b) or (c).

16 (b) Multidisciplinary Evaluation. – The cost of a multidisciplinary evaluation order
17 pursuant to G.S. 35A-1111 shall be assessed as follows:

- 18 (1) If the respondent is adjudicated incompetent and is not indigent, the cost
19 shall be assessed against the respondent;
20 (2) If the respondent is adjudicated incompetent and is indigent, the cost shall be
21 borne by the Department of Health and Human Services;
22 (3) If the respondent is not adjudicated incompetent, the cost may be taxed
23 against either party, apportioned among the parties, or borne by the
24 Department of Health and Human Services, in the discretion of the court.

25 (c) Witness. – ~~Witness fees and the fees of court-appointed counsel or guardian ad litem~~
26 shall be paid by:

- 27 (1) The respondent, if the respondent is adjudicated incompetent and is not
28 indigent;
29 (2) The petitioner, if the respondent is not adjudicated incompetent and the clerk
30 finds that there were not reasonable grounds to bring the proceeding;

31 (2a) The petitioner for any of the petitioner's witnesses, and the respondent for
32 any of the respondent's witnesses, when the clerk finds all of the following:

- 33 a. There were reasonable grounds to bring the proceeding.
34 b. The respondent was not adjudicated incompetent.



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- 1 c. The respondent is not indigent.
2 (3) The Administrative Office of the Courts ~~in all other cases.~~ for witness fees
3 for the respondent, if the respondent is indigent.
4 (c1) Mediator. – Mediator fees and other costs associated with mediation shall be
5 assessed in accordance with G.S. 7A-38.3B.
6 (c2) Guardian ad litem. – The fees of an appointed guardian ad litem shall be paid by:
7 (1) The respondent, if:
8 a. The respondent is adjudicated incompetent; and
9 b. The respondent is not indigent.
10 (2) The respondent, if:
11 a. The respondent is not adjudicated incompetent;
12 b. The clerk finds that there were reasonable grounds to bring the
13 proceeding; and
14 c. The respondent is not indigent.
15 (3) The petitioner, if:
16 a. The respondent is not adjudicated incompetent; and
17 b. The clerk finds that there were not reasonable grounds to bring the
18 proceedings.
19 (4) The Office of Indigent Defense Services in all other cases.
20 (d) The provisions of this section shall also apply to all parties to any proceedings under
21 this Chapter, including a guardian who has been removed from office and the sureties on the
22 guardian's bond."

23 **SECTION 2.** Article 5 of Chapter 35A of the General Statutes is amended by
24 adding a new section to read:

25 **"§ 35A-1217. Appointment of guardian ad litem for incompetent ward.**

26 The clerk shall appoint a guardian ad litem to represent a ward in a proceeding under this
27 Subchapter if the ward has been adjudicated incompetent under Subchapter I and the clerk
28 determines that the ward's interests are not adequately represented. Appointment and discharge
29 of the guardian ad litem shall be in accordance with rules adopted by the Office of Indigent
30 Defense Services. Nothing herein shall affect the ward's right to retain counsel of his or her
31 own choice."

32 **SECTION 3.** G.S. 7A-451(a) is amended by adding a new subdivision to read:

33 "(18) A proceeding involving placement into satellite monitoring under Part 5 of
34 Article 27A of Chapter 14 of the General Statutes."

35 **SECTION 4.** G.S. 14-208.40B(b) reads as rewritten:

36 "(b) If the Department determines that the offender falls into one of the categories
37 described in G.S. 14-208.40(a), the district attorney, representing the Department, Department
38 shall schedule a hearing in the superior court of for the county in which the offender resides.
39 The Department shall notify the offender of the Department's determination and the date of the
40 scheduled hearing by certified mail sent to the address provided by the offender pursuant to
41 G.S. 14-208.7. The hearing shall be scheduled no sooner than 15 days from the date the
42 notification is mailed. Receipt of notification shall be presumed to be the date indicated by the
43 certified mail receipt. Upon the court's determination that the offender is indigent and entitled
44 to counsel, the court shall assign counsel to represent the offender at the hearing pursuant to
45 rules adopted by the Office of Indigent Defense Services."

46 **SECTION 5.** G.S. 7A-451(c) reads as rewritten:

47 "(c) In any capital case, an indigent defendant who is under a sentence of death and
48 desires counsel may apply to the ~~superior court of the district where the defendant was indicted~~
49 Office of Indigent Defense Services for the appointment of counsel to represent the defendant
50 in preparing, filing, and litigating a motion for appropriate relief. The application for the

1 appointment of such postconviction counsel may be made prior to completion of review on
2 direct appeal and shall be made no later than 10 days from the latest of the following:

- 3 (1) The mandate has been issued by the Supreme Court of North Carolina on
4 direct appeal pursuant to N.C.R. App. P. 32(b) and the time for filing a
5 petition for writ of certiorari to the United States Supreme Court has expired
6 without a petition being filed;
- 7 (2) The United States Supreme Court denied a timely petition for writ of
8 certiorari of the decision on direct appeal by the Supreme Court of North
9 Carolina; or
- 10 (3) The United States Supreme Court granted the defendant's or the State's
11 timely petition for writ of certiorari of the decision on direct appeal by the
12 Supreme Court of North Carolina, but subsequently left the defendant's
13 death sentence undisturbed.

14 ~~If there is not a criminal or mixed session of superior court scheduled for that district, the~~
15 ~~application must be made no later than 10 days from the beginning of the next criminal or~~
16 ~~mixed session of superior court in the district.~~

17 (c1) Upon application, supported by the defendant's affidavit, ~~the superior court shall~~
18 ~~enter an order appointing the Office of Indigent Defense Services if the court finds that the~~
19 ~~defendant is indigent and desires counsel, and the Office of Indigent Defense Services shall~~
20 ~~determine whether the defendant was previously adjudicated indigent for purposes of trial or~~
21 ~~direct appeal. If the defendant was previously adjudicated indigent, the defendant shall be~~
22 ~~presumed indigent for purposes of this subsection and the Office of Indigent Defense Services~~
23 ~~shall appoint two counsel to represent the defendant. If the defendant was not previously~~
24 ~~adjudicated indigent, the Office of Indigent Defense Services shall request that the superior~~
25 ~~court in the district where the defendant was indicted determine whether the defendant is~~
26 ~~indigent. If the court finds that the defendant is indigent, the Office of Indigent Defense~~
27 ~~Services shall then appoint two counsel to represent the defendant.~~

28 (c2) The defendant does not have a right to be present at the time of appointment of
29 counsel, and the appointment need not be made in open court. ~~If the defendant was previously~~
30 ~~adjudicated an indigent for purposes of trial or direct appeal, the defendant shall be presumed~~
31 ~~indigent for purposes of this subsection."~~

32 **SECTION 6.** This act becomes effective July 1, 2009.