

AN ACT

ENTITLED, An Act to revise certain provisions related to indigent counsel.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 26-7A-31 be amended to read as follows:

26-7A-31. If the child or the child's parents, guardian, or other custodian requests an attorney in proceedings under this chapter or chapter 26-8A, 26-8B, or 26-8C and if the court finds the party to be without sufficient financial means to employ an attorney, the court shall appoint an attorney for the party. The court may appoint an attorney for any child or any party to the proceedings without request of the party if the court deems representation by an attorney necessary to protect the interests of the party. Reasonable and just compensation for services of a court-appointed attorney and for necessary expenses and costs incident to the proceedings shall be determined by the court within guidelines established by the presiding judge of the circuit court and shall be paid by the county in which the action is being conducted according to the manner prescribed by the court. If the court-appointed attorney is a party to a contract with the county to provide indigent counsel pursuant to subdivision 23A-40-7(3), the compensation for that attorney shall be that which the attorney would receive under the contract. This section does not preclude the court from appointment of an attorney for a child as required by provisions of chapter 26-8A.

Section 2. That § 26-8A-9 be amended to read as follows:

26-8A-9. Upon receipt of a report pursuant to § 26-8A-8, the Department of Social Services or law enforcement officers shall investigate. Investigating personnel may personally interview a child out of the presence of the child's parents, guardian, or custodian without advance notice or consent. The investigation does not prohibit any other lawful action. If the investigation and report indicate that child abuse or neglect has occurred, the state's attorney shall take appropriate action immediately. The court may appoint an attorney, guardian ad litem, or special advocate to assist in

representing the best interests of the child. Any such appointment shall occur in the manner the county in which the action is being conducted has chosen to provide indigent counsel under § 23A-40-7. Compensation and expense allowances for the child's attorney, guardian ad litem, or special advocate shall be determined and paid according to § 26-7A-31.

Section 3. That § 26-8A-18 be amended to read as follows:

26-8A-18. Notwithstanding the provisions of §§ 26-7A-31 and 26-8A-9, the court shall appoint an attorney for any child alleged to be abused or neglected in any judicial proceeding. The court shall appoint an attorney in the manner the county in which the action is being conducted has chosen to provide indigent counsel under § 23A-40-7. The attorney for the child shall represent the child's best interests and may not be the attorney for any other party involved in the judicial proceedings. The court may designate other persons, including a guardian ad litem or special advocate, who may or may not be attorneys licensed to practice law, to assist the attorney of the child in the performance of the attorney's duties. Compensation and expense allowances for the child's attorney shall be determined and paid according to § 26-7A-31.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1265

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1265

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State