

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

615R0736

## SENATE JUDICIARY ENGROSSED NO. **HB 1265** - 3/4/2010

Introduced by: Representatives Gibson, Feickert, Hunhoff (Bernie), Kirkeby, Lederman, Nygaard, Solum, and Thompson and Senators Hansen (Tom) and Fryslic

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to indigent counsel.

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

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

4 26-7A-31. If the child or the child's parents, guardian, or other custodian requests an attorney  
5 in proceedings under this chapter or chapter 26-8A, 26-8B, or 26-8C and if the court finds the  
6 party to be without sufficient financial means to employ an attorney, the court shall appoint an  
7 attorney for the party. The court may appoint an attorney for any child or any party to the  
8 proceedings without request of the party if the court deems representation by an attorney  
9 necessary to protect the interests of the party. Reasonable and just compensation for services of  
10 a court-appointed attorney and for necessary expenses and costs incident to the proceedings  
11 shall be determined by the court within guidelines established by the presiding judge of the  
12 circuit court and shall be paid by the county in which the action is being conducted according  
13 to the manner prescribed by the court. If the court-appointed attorney is a party to a contract with  
14 the county to provide indigent counsel pursuant to subdivision 23A-40-7(3), the compensation



1 for that attorney shall be that which the attorney would receive under the contract. This section  
2 does not preclude the court from appointment of an attorney for a child as required by provisions  
3 of chapter 26-8A.

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

5 26-8A-9. Upon receipt of a report pursuant to § 26-8A-8, the Department of Social Services  
6 or law enforcement officers shall investigate. Investigating personnel may personally interview  
7 a child out of the presence of the child's parents, guardian, or custodian without advance notice  
8 or consent. The investigation does not prohibit any other lawful action. If the investigation and  
9 report indicate that child abuse or neglect has occurred, the state's attorney shall take appropriate  
10 action immediately. The court may appoint an attorney, guardian ad litem, or special advocate  
11 to assist in representing the best interests of the child. Any such appointment shall occur in the  
12 manner the county in which the action is being conducted has chosen to provide indigent  
13 counsel under § 23A-40-7. Compensation and expense allowances for the child's attorney,  
14 guardian ad litem, or special advocate shall be determined and paid according to § 26-7A-31.

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

16 26-8A-18. Notwithstanding the provisions of §§ 26-7A-31 and 26-8A-9, the court shall  
17 appoint an attorney for any child alleged to be abused or neglected in any judicial proceeding.  
18 The court shall appoint an attorney in the manner the county in which the action is being  
19 conducted has chosen to provide indigent counsel under § 23A-40-7. The attorney for the child  
20 shall represent the child's best interests and may not be the attorney for any other party involved  
21 in the judicial proceedings. The court may designate other persons, including a guardian ad litem  
22 or special advocate, who may or may not be attorneys licensed to practice law, to assist the  
23 attorney of the child in the performance of the attorney's duties. Compensation and expense  
24 allowances for the child's attorney shall be determined and paid according to § 26-7A-31.