

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

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**HOUSE DRH70551-LL-286 (5/9)**

Short Title: Appointment of Counsel Funds.

(Public)

Sponsors: Representative Glazier.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO APPROPRIATE FUNDS TO INCREASE ACCESS TO COUNSEL IN CIVIL  
3 CASES, AS RECOMMENDED BY THE NORTH CAROLINA EQUAL ACCESS TO  
4 JUSTICE COMMISSION.

5 Whereas, the North Carolina Constitution provision for open and fair civil courts  
6 and Tribunals of Justice is one of the fundamental guarantees of our constitutional democracy  
7 and an historic legacy of this State; and

8 Whereas, the greater availability of competent legal assistance is essential to making  
9 our courts and tribunals open and fair, especially when there are complex factual and legal  
10 issues, the nature of the interests affect shelter, sustenance, safety, health, or family integrity,  
11 and the potential consequences of the outcome on the unrepresented party may be severe; and

12 Whereas, civil legal representation is often necessary for individuals to protect such  
13 basic human needs as shelter, sustenance, safety, health, or family integrity; and

14 Whereas, many of our State's citizens cannot afford legal representation for cases  
15 involving vital decisions about their lives and families, and over one-third of North Carolinians,  
16 nearly 3.2 million persons, are now eligible for federally-subsidized legal assistance, which is  
17 not adequate to meet the great need; Now, therefore,  
18 The General Assembly of North Carolina enacts:

19 **SECTION 1.** G.S. 7A-451 is amended by adding a new subsection to read:

20 "(g) In any civil case, the court may appoint an attorney to represent any person unable  
21 to afford counsel. In determining whether to exercise the discretion to appoint an attorney, the  
22 court shall consider the totality of circumstances relevant to the need for representation in the  
23 particular case, including such factors as:

24 (1) The complexity of the factual and legal issues in the case.

25 (2) The nature of the interests at stake, and particularly whether the case impacts  
26 basic human needs, including shelter, sustenance, safety, health, and family  
27 integrity.

28 (3) The severity of potential consequences that the outcome may have for the  
29 unrepresented party.

30 (4) The extent to which appointment of counsel in the case will assist in the  
31 administration of justice.

32 The court may revoke the appointment of counsel or take other appropriate action if the  
33 court determines that the allegation of poverty is untrue or the case is frivolous or malicious,  
34 fails to state a claim on which relief may be granted, or seeks monetary relief against a  
35 defendant who is immune from such relief.



1       The appointment of counsel as provided in this subsection and the procedure for  
2 compensation shall comply with rules adopted by the Office of Indigent Defense Services.

3       The services provided for under this subsection are not intended to and shall not supplant  
4 legal services resources supplied by any other source, and this subsection does not override the  
5 local or national priorities of existing civil legal services programs."

6       **SECTION 2.(a)** The Office of Indigent Defense Services shall develop protocols  
7 and make awards of twenty-five thousand dollars (\$25,000) each to three  
8 geographically-dispersed judicial districts to establish a Provision of Counsel Committee in  
9 each district to develop a plan to determine to what extent counsel is needed in civil cases  
10 affecting basic human needs and the most efficient and effective method for doing so,  
11 considering all existing and local resources.

12       **SECTION 2.(b)** The Provision of Counsel Committees chosen for each of the three  
13 pilot projects shall evaluate the existing justice system in that judicial district to identify areas  
14 of the law in which basic human needs are at stake, such as those involving shelter, sustenance,  
15 safety, health, or family integrity, and shall determine where the provision of counsel is needed  
16 to ensure that individuals in that district secure fair results. Such evaluation shall determine:

- 17           (1) The categories of cases requiring counsel.
- 18           (2) The subcategories of cases in which counsel is necessary as a result of being  
19           contested, complex or urgent matters.
- 20           (3) The levels of financial need that should trigger the provision of counsel.
- 21           (4) The categories of individuals with limitations of literacy, disability, age, and  
22           of other natures are in need of counsel.
- 23           (5) The costs of establishing a provision of counsel system in the particular  
24           judicial district.

25       **SECTION 2.(c)** Each Provision of Counsel Committee shall consist of at least  
26 seven members, including the senior resident superior court judge and the chief district court  
27 judge. The senior resident superior court judge, in consultation with the chief district court  
28 judge, shall appoint the remaining members, including at least the following:

- 29           (1) A clerk of court from the district.
- 30           (2) A representative from the judicial district bar association.
- 31           (3) A representative from the local established legal services provider as defined  
32           in G.S. 7A-474.2(1a).
- 33           (4) A representative of State or local government.
- 34           (5) A representative of the North Carolina Equal Access to Justice Commission.

35       **SECTION 2.(d)** Each Provision of Counsel Committee shall prepare a written  
36 report of its deliberations and findings and provide the report to the General Assembly no later  
37 than April 1, 2011.

38       **SECTION 3.** There is appropriated from the General Fund to the Judicial  
39 Department, Office of Indigent Defense Services, the sum of two hundred thousand dollars  
40 (\$200,000) for the 2010-2011 fiscal year to provide counsel in cases pursuant to  
41 G.S. 7A-451(g), as enacted in Section 1 of this act.

42       **SECTION 4.** There is appropriated from the General Fund to the Judicial  
43 Department, Office of Indigent Defense Services, the sum of seventy-five thousand dollars  
44 (\$75,000) for the 2010-2011 fiscal year to provide twenty-five thousand dollars (\$25,000)  
45 grants to three judicial districts to establish a Provision of Counsel Committee to study and  
46 develop a plan for provision of counsel in certain civil cases as provided in Section 2 of this  
47 act.

48       **SECTION 5.** This act becomes effective July 1, 2010.