

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 506  
Committee Substitute Favorable 3/25/09  
Senate Judiciary I Committee Substitute Adopted 7/7/09

Short Title: Clarify Entitlement to Counsel/Appointment.

(Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY RESPONSIBILITY FOR PAYMENT OF WITNESS FEES AND  
GUARDIAN AD LITEM FEES IN INCOMPETENCY PROCEEDINGS; AUTHORIZE  
APPOINTMENT OF A GUARDIAN AD LITEM FOR A PERSON WHO IS  
ADJUDICATED INCOMPETENT; PROVIDE FOR APPOINTMENT OF COUNSEL  
FOR AN INDIGENT PERSON IN CERTAIN PROCEEDINGS INVOLVING  
SATELLITE-BASED MONITORING OF SEX OFFENDERS; PROVIDE FOR  
REPRESENTATION FOR THE DEPARTMENT OF CORRECTION AND  
APPOINTMENT OF COUNSEL FOR INDIGENT OFFENDERS IN  
SATELLITE-BASED MONITORING PROCEEDINGS; AND PROVIDE FOR  
APPOINTMENT OF COUNSEL BY THE OFFICE OF INDIGENT DEFENSE  
SERVICES IN CAPITAL CASES.

The General Assembly of North Carolina enacts:

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

"§ 35A-1116. **Costs and fees.**

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

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

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

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

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



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

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

33 **"§ 35A-1217. Appointment of guardian ad litem for incompetent ward.**

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

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

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

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

44 "(b) If the Department determines that the offender falls into one of the categories  
45 described in G.S. 14-208.40(a), the district attorney, representing the Department, ~~Department~~  
46 shall schedule a hearing in ~~the superior court of~~ for the county in which the offender resides.  
47 The Department shall notify the offender of the Department's determination and the date of the  
48 scheduled hearing by certified mail sent to the address provided by the offender pursuant to  
49 G.S. 14-208.7. The hearing shall be scheduled no sooner than 15 days from the date the  
50 notification is mailed. Receipt of notification shall be presumed to be the date indicated by the  
51 certified mail receipt. Upon the court's determination that the offender is indigent and entitled

1 to counsel, the court shall assign counsel to represent the offender at the hearing pursuant to  
2 rules adopted by the Office of Indigent Defense Services."

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

4 "(c) In any capital case, an indigent defendant who is under a sentence of death and  
5 desires counsel may apply to the superior court of the district where the defendant was indicted  
6 Office of Indigent Defense Services for the appointment of counsel to represent the defendant  
7 in preparing, filing, and litigating a motion for appropriate relief. The application for the  
8 appointment of such postconviction counsel may be made prior to completion of review on  
9 direct appeal and shall be made no later than 10 days from the latest of the following:

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

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

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

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

39 **SECTION 6.** This act is effective when it becomes law.