

SENATE NO. 861

AN ACT TO FURTHER THE INTEREST OF CHILDREN IN NEED OF SERVICES

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. Section 2 ½ of chapter 211D of the General Laws, as inserted by section 195 of chapter
2 149 of the acts of 2004, as most recently amended by chapter 149 of the Acts of 2004, is hereby
3 amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

4 It shall be the responsibility of the chief probation officer assigned to each court to ensure that a
5 person claiming to be indigent meets the definition of indigency under section 2. A person seeking
6 appointment of counsel shall be interviewed by the chief probation officer or his designee before the
7 appointment of counsel. The person conducting the interview shall explain to the person seeking
8 appointment of counsel:

9 (1) the definition of indigency, (2) the process used to verify his information with other state
10 agencies, and (3) the consequences of misrepresenting his financial information in applying for the
11 appointment of counsel. The person conducting the interview shall prepare a written indigency intake
12 report that shall record the results of the interview and his recommendation on whether or not the
13 person seeking appointment of counsel is indigent. The person seeking appointment of counsel and the
14 person conducting the interview shall sign the indigency intake report. In signing the report, the person
15 seeking appointment of counsel shall certify under the pains and penalties of perjury that the

16 information contained therein is true and that he has not concealed any information relevant to his
17 financial status. All statements contained in the report shall be deemed material statements. The
18 completed report shall be presented to a judge who may adopt or reject the recommendations in the
19 report, either in whole or in part.

20 SECTION 2. Said section 2 ½ of said chapter 211D, as so amended, is hereby further
21 amended by striking the third paragraph and inserting in place thereof the following paragraph:- Any
22 appointment of counsel by the court is at all times subject to said verification of indigency by the chief
23 probation officer assigned to each court. Not later than 60 days after the appointment of counsel, said
24 chief probation officer or his designee shall complete a re-assessment of the financial circumstances of
25 the person for whom counsel was appointed to ensure that the person continues to meet the definition
26 of indigency. In preparing his re-assessment, the chief probation officer or his designee may access
27 wage and tax information in the possession of the department of revenue and such other information
28 relevant to the verification of indigency in the possession of the department of transitional assistance,
29 the department of medical assistance and the registry of motor vehicles. Said departments shall
30 provide such information to the chief probation officer or his designee upon request. Upon completion
31 of his re-assessment, the chief probation officer shall prepare a written report of his findings. The chief
32 probation officer shall sign the report, certifying that the person for whom counsel was appointed
33 either continues to meet or does not continue to meet the definition of indigency. The report shall be
34 filed with the case papers and shall be presented to the judge presiding at the person's next court
35 appearance. If, upon receipt of the report, a judge finds that the person no longer meets the definition
36 of indigency, he shall revoke the appointment of counsel and allow the person a reasonable
37 continuance to obtain new counsel. Not later than 6 months after the appointment of counsel, and
38 every 6 months thereafter, the chief probation officer or his designee shall conduct a further re-

39 assessment of the financial circumstances of the person for whom counsel was appointed to ensure
40 that he continues to meet the definition of indigency and shall prepare, sign and file a written report
41 certifying that the person either continues to meet, or does not continue to meet, that definition of
42 indigency.

43 SECTION 3. Said section 2 ½ of said chapter 211D, as so amended, is hereby further amended
44 by striking the fifth paragraph and inserting in place thereof the following paragraph:- Upon
45 completion of any said re-assessments, the chief probation officer shall prepare a written report of his
46 findings. The chief probation officer shall sign the report, certifying that the person for whom counsel
47 was appointed either continues to meet or does not continue to meet the definition of indigency. The
48 report shall be filed with the case papers and shall be presented to the judge presiding at the person's
49 next court appearance. If, upon receipt of the report, a judge finds that the person no longer meets the
50 definition of indigency, he shall revoke the appointment of counsel and allow the person a reasonable
51 continuance to obtain new counsel.

52 SECTION 4. Said section 2 ½ of said chapter 211D, as so amended, is hereby further
53 amended, by striking out the seventh paragraph and inserting in place thereof the following
54 paragraph:- A person provided counsel under this chapter shall be assessed a counsel fee of \$150,
55 which the court may waive only upon determining that the person is unable to pay. If, upon reviewing
56 the chief probation officer's report on the 60-day re-assessment of the person's indigency, the court
57 concludes that the person is able to pay the \$150 counsel fee of which he obtained a waiver, the court
58 shall invalidate the waiver and re-impose the \$150 counsel fee.

59 SECTION 5. Said section 2 ½ of said chapter 211D, as so amended, is hereby further amended
60 by striking out the eighth paragraph and inserting in place thereof the following paragraph:- The court
61 may authorize a person for whom counsel is appointed to perform community service in lieu of

62 payment of the counsel fee. A person seeking to work off his counsel fee in community service shall
63 perform 10 hours of community service for each \$100 he owes in legal counsel fees. Notwithstanding
64 any general or special law, rule or regulation to the contrary, a court proceeding shall not be
65 terminated and the person shall not be discharged if the person owes any portion of the legal counsel
66 fee imposed by this section. The clerk shall not release any bail posted on any criminal matter until the
67 legal counsel fee is satisfied in accordance with this chapter.

68 SECTION 6. Said section 2 ½ of said chapter 211D, as so amended, is hereby further amended
69 by striking out the ninth paragraph and inserting in place thereof the following:- The clerk of the court
70 shall, within 60 days of appointment of counsel, report to the departments of transitional assistance,
71 medical assistance and revenue and the registry of motor vehicles the amount of any legal counsel fee
72 owed by the person for whom counsel was appointed under this chapter. The department of revenue
73 shall intercept the fee from tax refunds due to persons who have not paid it. The departments of
74 transitional assistance and medical assistance shall deduct the fee in weekly or monthly increments
75 from the benefit payments of persons who have not paid it. The registrar of motor vehicles shall
76 suspend the driver's license and shall not renew the driver's license or automobile registration for any
77 person who has not paid any legal counsel fee pursuant to this section. Said person shall be permitted
78 to have issued, renew or reinstate a driver's license or automobile registration only upon a showing to
79 the registrar of motor vehicles that said legal counsel fee has been collected or that such person has
80 worked off said fee in community service as authorized by this section.

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