

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2081
(Judiciary Committee)
(At the request of the Supreme Court)

AN ACT to amend and reenact subdivision a of subsection 3 of section 12.1-32-08 and section 29-07-01.1 of the North Dakota Century Code, relating to application fees for indigent defense services, reimbursement of indigent defense costs and expenses, and creation of an indigent defense administration fund; and to provide for a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 3 of section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

3. a. Under section 12.1-32-07, the court may order that the defendant reimburse indigent defense costs and expenses as a condition of probation. The court shall notify the defendant, the defendant's probation officer, and the prosecuting attorney of the amount of costs and expenses to be reimbursed and of the defendant's right to a hearing on the reimbursement amount. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of seventy-five dollars per hour for appointed counsel services plus reasonable expenses. The reimbursement amount must include an application fee imposed under section 29-07-01.1 if the fee has not been paid before disposition of the case and the court has not waived payment of the fee. If the defendant requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the basis for the amount to be reimbursed must be demonstrated. In determining the amount and method of reimbursement, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.

SECTION 2. AMENDMENT. Section 29-07-01.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

29-07-01.1. Payment of expenses for defense of indigents - Reimbursement of indigent defense costs and expenses - Indigent defense administration fund - Continuing appropriation.

1. Lawyers appointed to represent ~~needy~~ indigent persons must be compensated at a reasonable rate to be determined by the court. Expenses necessary for the adequate defense of ~~a needy~~ an indigent person, when approved by the judge, must be paid by the state if the action is prosecuted in district court and by the city in which the alleged offense took place if the action is prosecuted in municipal court. The city shall also pay the expenses in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19. A defendant requesting representation by appointed counsel, or for whom appointed counsel without a request is considered appropriate by the court, shall submit an application for appointed defense services. For an application for appointed defense services in the district court, a nonrefundable application fee of twenty-five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the case, the fee amount must be added to the amount to be reimbursed under this section. Application fees collected under this subsection must be forwarded for deposit in the indigent defense administration fund established under subsection 4.

2. A defendant with appointed counsel, subject to this subsection, shall reimburse the state or city such sums as the state or city expends on the defendant's behalf.
 - a. At the time counsel is appointed for a defendant, the appointing court shall advise the defendant of the defendant's potential obligation to reimburse the appropriate governmental entity the amounts expended on behalf of the defendant.
 - b. Within ninety days after its judgment of conviction or after conclusion of an appeal of its initial judgment of conviction, the court that appointed counsel for the defendant shall notify the defendant and the prosecuting attorney of the amount of indigent defense costs and expenses the defendant is obligated to reimburse if able to do so and of the defendant's right to a hearing on the reimbursement amount. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of seventy-five dollars per hour for appointed counsel services plus reasonable expenses. If the defendant requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the basis for the amount to be reimbursed must be demonstrated. In determining the amount of reimbursement and method of payment, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.
 - c. A defendant who is required to reimburse indigent defense costs and expenses and who is not willfully in default in that reimbursement may at any time petition the court to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.
3. The state's attorney of the county or prosecuting attorney of the city in which the alleged offense took place, if reimbursement has not been received, shall seek civil recovery of any amounts expended on the defendant's behalf any time the state's attorney or city attorney determines the person for whom counsel was appointed may have funds to repay the state or city within six years of the date such amount was paid on that person's behalf. A person against whom civil recovery is sought under this subsection is entitled to all exemptions accorded to other judgment debtors. The state's attorney may contract with a private sector collection agency for assistance in seeking recovery of such funds. Before referring the matter to a collection agency, the state's attorney shall notify the person who is the subject of the collection action.
4. The indigent defense administration fund is a special fund in the state treasury. The state treasurer shall deposit in the fund all application fees collected under subsection 1. All moneys in the indigent defense administration fund are appropriated on a continuing basis to the judicial branch to be used in the administration of the indigent defense system and the collection of indigent defense costs and expenses required to be reimbursed under this section.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2081.

Senate Vote: Yeas 35 Nays 12 Absent 2

House Vote: Yeas 58 Nays 35 Absent 5

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State