

September 2002

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 54-57 of the North Dakota
2 Century Code, relating to the office of administrative hearings and indigent defense contracts;
3 and to amend and reenact sections 27-20-49 and 29-07-01.1 of the North Dakota Century
4 Code, relating to the provision of indigent defense services.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 27-20-49 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **27-20-49. Costs and expenses for care of child.**

- 9 1. The following expenses are a charge upon the funds of the county upon
10 certification thereof by the court:
- 11 a. The cost of medical and other examinations and treatment of a child ordered
12 by the court.
- 13 b. The cost of care and support of a child committed by the court to the legal
14 custody of a public agency other than an institution for delinquent children, or
15 to a private agency or individual other than a parent.
- 16 c. The cost of any necessary transportation for medical and other examinations
17 and treatment of a child ordered by the court unless the child is in the legal
18 custody of a state agency.
- 19 2. The ~~supreme court~~ office of administrative hearings shall pay reasonable
20 compensation for services and related expenses of counsel appointed by the court
21 for a party and the supreme court shall pay reasonable compensation for a
22 guardian ad litem. The attorney general shall pay the witness fees, mileage, and
23 travel expense of witnesses incurred in the proceedings under this chapter in the
24 amount and at the rate provided for in section 31-01-16. Expenses of the state

1 include the cost of any necessary transportation for medical and other
2 examinations and treatment of a child ordered by the court if the child is in the legal
3 custody of a state agency in which case the cost must be reimbursed to the county
4 by that state agency at the state mileage rate, excluding meals and lodging, plus
5 twenty-nine cents per mile.

- 6 3. If, after due notice to the parents or other persons legally obligated to care for and
7 support the child, and after affording them an opportunity to be heard, the court
8 finds that they are financially able to pay all or part of the costs and expenses
9 stated in subsection 1, and expenses payable by the supreme court under
10 subsection 2, the court may order them to pay the same and prescribe the manner
11 of payment. Unless otherwise ordered, payment shall be made to the clerk of the
12 juvenile court for remittance to the person to whom compensation is due, or if the
13 costs and expenses have been paid by the county or the state to the county
14 treasurer of the county or to the state treasurer.

15 **SECTION 2. AMENDMENT.** Section 29-07-01.1 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **29-07-01.1. Payment of expenses for defense of indigents - Reimbursement of**
18 **indigent defense costs and expenses - Indigent defense administration fund - Continuing**
19 **appropriation.**

- 20 1. Lawyers appointed to represent indigent persons must be compensated at a
21 reasonable rate to be determined by the ~~court~~ office of administrative hearings.
22 Expenses necessary for the adequate defense of an indigent person, when
23 approved by the judge, must be paid by the state if the action is prosecuted in
24 district court and by the city in which the alleged offense took place if the action is
25 prosecuted in municipal court. The city shall also pay the expenses in any appeal
26 taken to district court from a judgment of conviction in municipal court pursuant to
27 section 40-18-19. A defendant requesting representation by appointed counsel, or
28 for whom appointed counsel without a request is considered appropriate by the
29 court, shall submit an application for appointed defense services. For an
30 application for appointed defense services in the district court, a nonrefundable
31 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

1 immediate family, the court may waive reimbursement of all or any portion of
2 the amount due or modify the method of payment.

3 3. The state's attorney of the county or prosecuting attorney of the city in which the
4 alleged offense took place, if reimbursement has not been received, shall seek civil
5 recovery of any amounts expended on the defendant's behalf any time the state's
6 attorney or city attorney determines the person for whom counsel was appointed
7 may have funds to repay the state or city within six years of the date such amount
8 was paid on that person's behalf. A person against whom civil recovery is sought
9 under this subsection is entitled to all exemptions accorded to other judgment
10 debtors. The state's attorney may contract with a private sector collection agency
11 for assistance in seeking recovery of such funds. Before referring the matter to a
12 collection agency, the state's attorney shall notify the person who is the subject of
13 the collection action.

14 4. The indigent defense administration fund is a special fund in the state treasury.
15 The state treasurer shall deposit in the fund all application fees collected under
16 subsection 1. ~~All~~ Forty percent of the moneys in the indigent defense
17 administration fund are appropriated on a continuing basis to the judicial branch
18 office of administrative hearings to be used in the administration of the indigent
19 defense system and sixty percent of the moneys in the fund are appropriated on a
20 continuing basis to the judicial branch to be used for the collection of indigent
21 defense costs and expenses required to be reimbursed under this section.

22 **SECTION 3.** A new section to chapter 54-57 of the North Dakota Century Code is
23 created and enacted as follows:

24 **Office of administrative hearings to contract for indigent defense services.** The
25 office of administrative hearings shall establish and implement a process of contracting for the
26 legal counsel services for indigents which are required to be provided under applicable court
27 rules, sections 27-20-26, 29-07-01.1, and 29-32.1-05, and any other statute that requires the
28 appointment of state-funded legal services for indigents. The contracts for indigent defense
29 services must provide for the reimbursement for those expenses determined by the office of
30 administrative hearings to be reasonable and necessary for the adequate defense of indigent
31 persons. The office of administrative hearings also shall establish a process for determining

- 1 rates for those indigent defense services provided outside of the contracts. Periodically the
- 2 office shall review the application process for determining eligibility for indigent defense
- 3 services.