

Fifty-eighth
Legislative Assembly
of North Dakota

REENGROSSED HOUSE BILL NO. 1044

Introduced by

Legislative Council

(Judiciary A Committee)

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 to amend and reenact section 27-20-49 and subsection 1 and 4 of section 29-07-01.1 of the
4 North Dakota Century Code, relating to the provision of indigent defense services; to provide
5 for a report to the legislative council; to provide for transition; to provide a statement of
6 legislative intent; and to provide an effective date.

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

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

10 **27-20-49. Costs and expenses for care of child.**

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

travel expense of witnesses incurred in the proceedings under this chapter in the amount and at the rate provided for in section 31-01-16. Expenses of the state include the cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court if the child is in the legal custody of a state agency in which case the cost must be reimbursed to the county by that state agency at the state mileage rate, excluding meals and lodging, plus twenty-nine cents per mile.

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

SECTION 2. AMENDMENT. Subsection 1 of section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Lawyers appointed to represent indigent persons must be compensated at a reasonable rate to be determined by the ~~court~~ office of administrative hearings. Expenses necessary for the adequate defense of 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.

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.

SECTION 3. AMENDMENT. Subsection 4 of section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

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~~ office of administrative hearings 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.~~

SECTION 4. A new section to chapter 54-57 of the North Dakota Century Code is created and enacted as follows:

Office of administrative hearings to contract for indigent defense services. The office of administrative hearings shall establish, implement, and administer a process of contracting for all or a part of the legal counsel services for indigents which are required to be provided under applicable court rules, sections 27-20-26, 29-07-01.1, and 29-32.1-05, and any other statute that requires the appointment of state-funded legal services for indigents. In addition to or in combination with contracting for legal counsel services and within the limits of available funding, the office of administrative hearings may employ indigent defense counsel on a full-time or part-time basis to provide legal services for indigents. The office of administrative

1 hearings also shall establish, implement, and administer a process for assigning indigent
2 defense counsel to those individuals determined by the court to be eligible for and in need of
3 indigent defense services. The contracts for indigent defense services must provide for the
4 reimbursement for those expenses determined by the office of administrative hearings to be
5 reasonable and necessary for the adequate defense of indigent individuals. The office of
6 administrative hearings also shall establish and administer a process for determining rates for
7 those indigent defense services provided outside the contracts. Periodically the office shall
8 review the application process for determining eligibility for indigent defense services.

9 **SECTION 5. REPORT TO LEGISLATIVE COUNCIL.** During the 2003-04 interim, the
10 office of administrative hearings shall report to the legislative council regarding its progress in
11 the implementation of this Act.

12 **SECTION 6. TRANSITION.** All contracts for indigent defense services awarded by the
13 supreme court after June 30, 2003, must expire no later than December 31, 2003.

14 **SECTION 7. LEGISLATIVE INTENT.** It is the intent of the legislative assembly that the
15 appropriation for the judicial branch in House Bill No. 1002 be reduced by \$3,143,179 from the
16 general fund and that the appropriation for the office of administrative hearings be increased by
17 the same amount to provide funding to administer the provisions of this Act for the biennium
18 beginning July 1, 2003, and ending June 30, 2005.

19 **SECTION 8. EFFECTIVE DATE.** Sections 1, 2, and 4 of this Act become effective on
20 January 1, 2004.

21 **SECTION 9. EFFECTIVE DATE.** Section 3 of this Act becomes effective on July 1,
22 2003. The office of administrative hearings may use moneys appropriated to the office for the
23 biennium beginning July 1, 2003, and ending June 30, 2005, to prepare for the implementation
24 of contracting for indigent defense services required under section 4 of this Act so that the
25 process may be established and implemented by January 1, 2004.