10098.0100

Sixty-second Legislative Assembly of North Dakota

Introduced by

FIRST DRAFT:
Prepared by the Legislative Council staff for the
Judicial Process Committee

June 2010

- 1 A BILL for an Act to amend and reenact sections 25-03.3-09 and 54-61-02 of the North Dakota
- 2 Century Code, relating to legal counsel in cases involving the commitment of sexually
- 3 dangerous individuals.

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4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.3-09 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-09. Right to counsel - Waiver.

- 1. Every respondent is entitled to legal counsel. Unless an appearance has been entered on behalf of the respondent, the court, within twenty-four hours from the time the petition was filed, exclusive of weekends or holidays, shall appoint counsel to represent the respondent. If a respondent retains counsel, the retained counsel immediately shall notify the court of that fact.
- 2. After consultation with counsel, the respondent may waive the right to counsel or the right to any hearing provided pursuant to this chapter by notifying the court in writing. The notification must clearly state the respondent's reasons for the waiver and the respondent's counsel shall separately certify that counsel has explained to the respondent the proceedings, the legal and factual issues, potential defenses, the burden of proof, and possible outcomes of the proceedings. No guardian, guardian ad litem, attorney, or other individual may waive the right to counsel on behalf of an individual with mental retardation.
- 3. If the court determines that the respondent is indigent, the court shall appoint counsel and order that appointed counsel be compensated by the county that is the respondent's place of residence in a reasonable amount based upon time and expenses provided by the commission on legal counsel for indigents.

1		4.	The state's attorney of a county that has expended sums pursuant to subsection 3			
2			may seek civil recovery of those sums from property of the respondent.			
3			Commencement of the action must occur within six years after the date the sums			
4			were paid. After notice and hearing, the court may order an individual to reimburse			
5			the county for expenditures made on that individual's behalf pursuant to this			
6			cha	pter.		
7		SEC	CTIOI	N 2. /	AMENDMENT. Section 54-61-02 of the North Dakota Century Code is	
8	amend	ded a	and reenacted as follows:			
9		54-0	-61-02. Commission responsibilities.			
10		1.	The commission shall:			
11			a.	Deve	elop standards governing the delivery of indigent defense services,	
12			including:			
13				(1)	Standards governing eligibility for indigent defense services;	
14				(2)	Standards for maintaining and operating regional public defender	
15					offices if established;	
16				(3)	Standards prescribing minimum experience, training, and other	
17					qualifications for contract counsel and public defenders;	
18				(4)	Standards for contract counsel and public defender caseloads;	
19				(5)	Standards for the evaluation of contract counsel and public defenders;	
20				(6)	Standards for independent, competent, and efficient representation of	
21					clients whose cases present conflicts of interest;	
22				(7)	Standards for the reimbursement of expenses incurred by contract	
23					counsel; and	
24				(8)	Other standards considered necessary and appropriate to ensure the	
25					delivery of adequate indigent defense services.	
26			b.	o. Establish and implement a process of contracting for legal counsel services		
27				for indigents.		
28			C.	. Establish public defender offices in the regions of the state as the commission		
29			considers necessary and appropriate.			
30			d.	d. Establish and implement a process for the administration, supervision, and		
31				delivery of legal counsel services for indigents under section 25-03.3-09.		

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- 1 Establish a method for accurately tracking and monitoring caseloads of e. 2 contract counsel and public defenders. 3
 - e. <u>f.</u> Approve and submit a biennial budget request to the office of the budget.
 - 2. Upon the request of a county or city, the commission may agree to provide indigent defense services in the county or city for those cases in which the county or city is otherwise required to provide such services. Moneys received by the commission in accordance with an agreement under this subsection must be deposited in the indigent defense administration fund.
 - The commission shall adopt rules for the exercise of its authority under this chapter in a manner generally consistent with the notice and comment provisions of section 28-32-11.