

Sixty-first  
Legislative Assembly  
of North Dakota

Introduced by

Representative DeKrey

Senator Lyson

(At the request of the North Dakota Commission on Legal Counsel for Indigents)

1 A BILL for an Act to create and enact section 11-09.1-14, relating to expenses for indigent  
2 defense services in home rule counties; and to amend and reenact subsection 4 of section  
3 12.1-32-08, section 27-20-49, and subsections 1, 2, and 3 of the North Dakota Century Code,  
4 relating to payment of and reimbursement for indigent defense attorney fees and expenses.

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

6 **SECTION 1.** Section 11-09.1-14 of the North Dakota Century Code is created and  
7 enacted as follows:

8 **11-09.1-14. Payment of expenses for indigent defense services.** The home rule  
9 county must pay for an attorney and those expenses necessary for the adequate defense of an  
10 indigent person prosecuted for violation of a home rule county ordinance.

11 **SECTION 2. AMENDMENT.** Subsection 4 of section 12.1-32-08 of the North Dakota  
12 Century Code is amended and reenacted as follows:

13 4. a. Under section 12.1-32-07, the court may order that the defendant reimburse  
14 indigent defense costs and expenses as a condition of probation. ~~The court~~  
15 Unless it finds that there is not likelihood that the defendant is or will be able  
16 to pay attorney fees and expenses, the court, in its judgement of conviction,  
17 and in any order or amended judgment following a revocation or other  
18 postjudgment proceeding, shall notify the defendant, the defendant's  
19 probation officer, and the prosecuting attorney of the amount of costs and  
20 expenses to be reimbursed, as determined by the commission on legal  
21 counsel for indigents, and of the defendant's right to a hearing on the  
22 reimbursement amount. It is a rebuttable presumption that reasonable  
23 reimbursement of costs and expenses consists of seventy five dollars per  
24 hour for 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 or prosecutor 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~~ actual amount of attorney fees and expenses must be ~~demonstrated~~ shown. 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.

b. A defendant who is required to reimburse indigent defense costs and expenses as a condition of probation and who is not willfully in default in that reimbursement may at any time petition the court that imposed the condition 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.

c. If at any time the court finds that the defendant is able to reimburse costs and expenses and has willfully failed to do so, the court may continue, modify, or enlarge the conditions of probation or revoke probation as provided in subsection 6 or 7, as applicable, of section 12.1-32-07.

**SECTION 3. AMENDMENT.** Section 27-20-49 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The following expenses are a charge upon the funds of the county upon certification thereof by the court:

- a. The cost of medical and other examinations and treatment of a child ordered by the court.
- b. The cost of care and support of a child committed by the court to the legal custody of a public agency other than an institution for delinquent children or to a private agency or individual other than a parent.

1 c. The cost of any necessary transportation for medical and other examinations  
2 and treatment of a child ordered by the court unless the child is in the legal  
3 custody of a state agency.

4 2. The commission on legal counsel for indigents shall pay reasonable compensation  
5 for services and related expenses of counsel provided at public expense for a party  
6 and the supreme court shall pay reasonable compensation for a guardian ad litem.  
7 The attorney general shall pay the witness fees, mileage, and travel expense of  
8 witnesses incurred in the proceedings under this chapter in the amount and at the  
9 rate provided for in section 31-01-16. Expenses of the state include the cost of any  
10 necessary transportation for medical and other examinations and treatment of a  
11 child ordered by the court if the child is in the legal custody of a state agency in  
12 which case the cost must be reimbursed to the county by that state agency at the  
13 state mileage rate, excluding meals and lodging, plus twenty-nine cents per mile.

14 3. If, after due notice to the parents or other persons legally obligated to care for and  
15 support the child, and to a child over the age of eighteen, and after affording them  
16 an opportunity to be heard, the court finds that they are financially able to pay all or  
17 part of the costs and expenses stated in subsection 1, and expenses payable by  
18 ~~the commission on legal counsel for indigents or the supreme court under~~  
19 subsection 2, the court may order them to pay the same and prescribe the manner  
20 of payment. Unless otherwise ordered, payment shall be made to the clerk of the  
21 juvenile court for remittance to the person to whom compensation is due, or if the  
22 costs and expenses have been paid by the county or the state to the county  
23 treasurer of the county or to the state treasurer.

24 4. Unless it finds that there is no likelihood that the part is or will be able to pay  
25 attorney fees and expenses, the court, in its order or judgment following a hearing  
26 under this chapter, shall order the parents or other persons legally obligated to  
27 care for and support the child, and the child if over the age of eighteen, to  
28 reimburse the presumed amount of indigent defense costs and expenses, as  
29 determined by the commission, and shall notify the party of the right to a hearing  
30 on the reimbursement amount. If the party or state requests a hearing within thirty  
31 days of receiving notice under this subdivision, the court shall schedule a hearing

at which the actual amount of attorney fees and expenses must be shown. In determining the amount of reimbursement and method of payment, the court shall consider the financial resources of the party and the nature of the burden that reimbursement of costs and expenses will impose.

5. A party 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 attorney fees and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the party or the party's immediate family, the court may waive reimbursement of all or any portion of the amount due to modify the method of payment.

**SECTION 4. AMENDMENT.** Section 29-07-01.1 of 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 provided to represent indigent persons must be compensated at a reasonable rate to be determined by the commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person prosecuted in district court, other than for a violation of a home county's ordinance, when approved by the commission, must be paid by the state. Expenses necessary for the adequate defense of an indigent person prosecuted for violation of a home rule county's ordinance must be paid by the home rule county. Expenses necessary for the adequate defense of an indigent person prosecuted in municipal court, when approved by the judge, must be paid by the city in which the alleged offense took place. The city shall also pay the expenses in any matter transferred to district court pursuant to section 40-18-15.1 and 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 counsel at public expense, or for whom counsel provided at public expense without a request is considered appropriate by the court, shall submit an application for indigent defense services. For an

1 application for indigent defense services in the district court, a nonrefundable  
2 application fee of twenty-five dollars must be paid at the time the application is  
3 submitted. The district court may extend the time for payment of the fee or may  
4 waive or reduce the fee if the court determines the defendant is financially unable  
5 to pay all or part of the fee. If the application fee is not paid before disposition of  
6 the case, the fee amount must be added to the amount to be reimbursed under this  
7 section. Application fees collected under this subsection must be forwarded for  
8 deposit in the indigent defense administration fund established under subsection 4.

9 2. A defendant for whom counsel is provided at public expense, subject to this  
10 subsection, shall reimburse the state, home rule county or city such sums as the  
11 state, home rule county, or city expends on the defendant's behalf.

- 12 a. At the time counsel is provided for a defendant, the court shall advise the  
13 defendant of the defendant's potential obligation to reimburse the appropriate  
14 governmental entity the amounts expended on behalf of the defendant.
- 15 b. ~~Within ninety days after its judgment of conviction or after conclusion of an~~  
16 ~~appeal of its initial judgment of conviction, the court shall notify the defendant~~  
17 ~~and the prosecuting attorney of the~~ Unless it finds that there is is no likelihood  
18 that the defendant is or will be able to pay attorney fees and expenses, the  
19 court, in its judgment of conviction, and in any order or amended judgment  
20 entered following revocation or other post-judgment proceeding, shall order  
21 the defendant to reimburse the presumed amount of indigent defense costs  
22 and expenses, as determined by the commission, and shall notify the  
23 ~~defendant is obligated to reimburse if able to do so and of the defendant's~~  
24 ~~right to a hearing on the reimbursement amount. It is a rebuttable~~  
25 ~~presumption that reasonable reimbursement of costs and expenses consists~~  
26 ~~of seventy five dollars per hour for counsel services plus reasonable~~  
27 ~~expenses.~~ If the defendant or prosecutor requests a hearing within thirty days  
28 of receiving notice under this subdivision, the court shall schedule a hearing at  
29 which the ~~basis for the amount to be reimbursed~~ actual amount of attorney  
30 fees and expenses must be ~~demonstrated~~ shown. In determining the amount  
31 of reimbursement and method of payment, the court shall consider the

1 financial resources of the defendant and the nature of the burden that  
2 reimbursement of costs and expenses will impose.

3 c. A defendant who is required to reimburse indigent defense costs and  
4 expenses and who is not willfully in default in that reimbursement may at any  
5 time petition the court to waive reimbursement of all or any portion of the  
6 ~~costs~~ attorney fees and expenses. If the court is satisfied that reimbursement  
7 of the amount due will impose undue hardship on the defendant or the  
8 defendant's immediate family, the court may waive reimbursement of all or  
9 any portion of the amount due or modify the method of payment.

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