

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1109
(Judiciary Committee)
(At the request of the Supreme Court)

AN ACT to amend and reenact subsection 3 of section 12.1-32-08 and subsection 2 of section 29-07-01.1 of the North Dakota Century Code, relating to reimbursement of indigent defense costs and expenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 12.1-32-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. a. ~~Prior to imposing reimbursement of~~ 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. The court shall hold a hearing on the matter with notice to the prosecuting attorney, notify the defendant, and the defendant's probation officer concerning the nature, 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 fifty seventy-five dollars per hour for appointed counsel services plus reasonable expenses. ~~The court may not impose reimbursement of indigent defense costs and expenses as a condition of probation unless the court finds the defendant is or may be able to pay them.~~ 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.
- 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 ~~5 or 6~~ or 7, as applicable, of section 12.1-32-07.

SECTION 2. AMENDMENT. Subsection 2 of section 29-07-01.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A defendant with appointed counsel, subject to subdivisions a through c of 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 ~~fifty~~ seventy-five dollars per hour for appointed counsel services plus reasonable expenses. ~~Following receipt of~~ If the defendant requests a hearing within thirty days of receiving notice under this subdivision, the defendant is entitled to 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.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1109.

House Vote: Yeas 81 Nays 12 Absent 5

Senate Vote: Yeas 46 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State