

HOUSE BILL NO. 1497

Introduced by

Representative Nathe

Senator Cook

1 A BILL for an Act to amend and reenact sections 25-03.3-09 and 54-61-03 of the North Dakota
2 Century Code, relating to legal counsel in cases involving the commitment of sexually
3 dangerous individuals.

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

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

7 **25-03.3-09. Right to counsel - Waiver.**

- 8 1. Every respondent is entitled to legal counsel. Unless an appearance has been
9 entered on behalf of the respondent, the court, within twenty-four hours from the
10 time the petition was filed, exclusive of weekends or holidays, shall appoint counsel
11 to represent the respondent. If a respondent retains counsel, the retained counsel
12 immediately shall notify the court of that fact.
- 13 2. After consultation with counsel, the respondent may waive the right to counsel or
14 the right to any hearing provided pursuant to this chapter by notifying the court in
15 writing. The notification must clearly state the respondent's reasons for the waiver
16 and the respondent's counsel shall separately certify that counsel has explained to
17 the respondent the proceedings, the legal and factual issues, potential defenses,
18 the burden of proof, and possible outcomes of the proceedings. No guardian,
19 guardian ad litem, attorney, or other individual may waive the right to counsel on
20 behalf of an individual with mental retardation.
- 21 3. If the court determines that the respondent is indigent, the court shall appoint
22 counsel and order that appointed counsel be compensated by the ~~county that is~~
23 ~~the respondent's place of residence in a reasonable amount based upon time and~~
24 ~~expenses~~ state pursuant to section 29-07-01.1.

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 ~~chapter.~~

7 **SECTION 2. AMENDMENT.** Section 54-61-03 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **54-61-03. Commission director - Responsibilities.**

- 10 1. The commission shall appoint a director who must be chosen on the basis of
11 training, experience, and other qualifications considered appropriate. The director
12 must be an attorney licensed and eligible to practice law in this state at the time of
13 appointment and at all times during service as director. The director may be
14 removed for cause by a majority vote of commission members.
- 15 2. The director shall:
- 16 a. Assist the commission in developing standards for the delivery of adequate
17 indigent defense services;
- 18 b. Administer and coordinate delivery of indigent defense services and supervise
19 compliance with commission standards;
- 20 c. Recommend the establishment of public defender offices when considered
21 necessary and appropriate to the delivery of adequate indigent defense
22 services;
- 23 d. Conduct regular training programs for contract counsel and public defenders;
- 24 e. Subject to policies and procedures established by the commission, hire the
25 professional, technical, and support personnel, including attorneys to serve as
26 public defenders, considered reasonably necessary for the efficient delivery of
27 indigent defense services;
- 28 f. Prepare and submit to the commission a proposed biennial budget for the
29 provision of indigent defense services; an annual report containing pertinent
30 data on the operation, needs, and costs of the indigent defense contract

- 1 system and any established public defender offices; and any other information
2 as the commission may require;
- 3 g. Submit the annual report required under subdivision f to the legislative
4 council; and
- 5 h. Perform other duties as the commission may assign.
- 6 3. Notwithstanding subsection 2, the director is not responsible for the administration,
7 supervision, or delivery of indigent defense services under chapter 25-03.3.