

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1107

Introduced by

Representative DeKrey

Senator Lyson

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

1 A BILL for an Act to create and enact section 11-09.1-14 of the North Dakota Century Code,
2 relating to expenses for indigent defense services in home rule counties; and to amend and
3 reenact subsection 4 of section 12.1-32-08, section 27-20-49, and subsections 1, 2, and 3 of
4 section 29-07-01.1 of the North Dakota Century Code, relating to the payment of and
5 reimbursement for indigent defense attorney's fees and expenses.

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

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

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

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

14 4. a. Under section 12.1-32-07, the court may order that the defendant reimburse
15 indigent defense costs and expenses as a condition of probation. ~~The court~~
16 Unless it finds that there is no likelihood that the defendant is or will be able to
17 pay attorney's fees and expenses, the court, in its judgment of conviction, and
18 in any order or amended judgment following a revocation or other
19 postjudgment proceeding, shall notify the defendant, the defendant's
20 probation officer, and the prosecuting attorney of the presumed amount of
21 costs and expenses to be reimbursed, as determined by the commission on
22 legal counsel for indigents, and of the defendant's right to a hearing on the
23 reimbursement amount. ~~It is a rebuttable presumption that reasonable~~
24 reimbursement of costs and expenses consists of seventy five dollars per

1 ~~hour for counsel services plus reasonable expenses.~~ The reimbursement
2 amount must include an application fee imposed under section 29-07-01.1 if
3 the fee has not been paid before disposition of the case and the court has not
4 waived payment of the fee. If the defendant or prosecutor requests a hearing
5 within thirty days of receiving notice under this subdivision, the court shall
6 schedule a hearing at which the ~~basis for the amount to be reimbursed~~ actual
7 amount of attorney's fees and expenses must be ~~demonstrated~~ shown. In
8 determining the amount and method of reimbursement, the court shall
9 consider the financial resources of the defendant and the nature of the burden
10 that reimbursement of costs and expenses will impose.

11 b. A defendant who is required to reimburse indigent defense costs and
12 expenses as a condition of probation and who is not willfully in default in that
13 reimbursement may at any time petition the court that imposed the condition
14 to waive reimbursement of all or any portion of the costs and expenses. If the
15 court is satisfied that reimbursement of the amount due will impose undue
16 hardship on the defendant or the defendant's immediate family, the court may
17 waive reimbursement of all or any portion of the amount due or modify the
18 method of payment.

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

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

25 **27-20-49. Costs and expenses for care of child.**

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

28 a. The cost of medical and other examinations and treatment of a child ordered
29 by the court.

- 1 b. The cost of care and support of a child committed by the court to the legal
2 custody of a public agency other than an institution for delinquent children or
3 to a private agency or individual other than a parent.
- 4 c. The cost of any necessary transportation for medical and other examinations
5 and treatment of a child ordered by the court unless the child is in the legal
6 custody of a state agency.
- 7 2. The commission on legal counsel for indigents shall pay reasonable compensation
8 for services and related expenses of counsel provided at public expense for a party
9 and the supreme court shall pay reasonable compensation for a guardian ad litem.
10 The attorney general shall pay the witness fees, mileage, and travel expense of
11 witnesses incurred in the proceedings under this chapter in the amount and at the
12 rate provided for in section 31-01-16. Expenses of the state include the cost of any
13 necessary transportation for medical and other examinations and treatment of a
14 child ordered by the court if the child is in the legal custody of a state agency in
15 which case the cost must be reimbursed to the county by that state agency at the
16 state mileage rate, excluding meals and lodging, plus twenty-nine cents per mile.
- 17 3. If, after due notice to the parents or other persons legally obligated to care for and
18 support the child, and to a child over the age of eighteen, and after affording them
19 an opportunity to be heard, the court finds that they are financially able to pay all or
20 part of the costs and expenses stated in subsection 1, and expenses payable by
21 the ~~commission on legal counsel for indigents~~ or the supreme court under
22 subsection 2, the court may order them to pay the same and prescribe the manner
23 of payment. Unless otherwise ordered, payment shall be made to the clerk of the
24 juvenile court for remittance to the person to whom compensation is due, or if the
25 costs and expenses have been paid by the county or the state to the county
26 treasurer of the county or to the state treasurer.
- 27 4. Unless it finds that there is no likelihood that the party is or will be able to pay
28 attorney's fees and expenses, the court, in its order or judgment following a
29 hearing under this chapter, shall order the parents or other persons legally
30 obligated to care for and support the child, and the child if over the age of eighteen,
31 to reimburse the presumed amount of indigent defense costs and expenses, as

1 determined by the commission on legal counsel for indigents, and shall notify the
2 party of the right to a hearing on the reimbursement amount. If the party or the
3 state requests a hearing within thirty days of receiving notice under this subsection,
4 the court shall schedule a hearing at which the actual amount of attorney's fees
5 and expenses must be shown. In determining the amount of reimbursement and
6 method of payment, the court shall consider the financial resources of the party
7 and the nature of the burden that reimbursement of costs and expenses will
8 impose.

9 5. A party who is required to reimburse indigent defense costs and expenses and
10 who is not willfully in default in that reimbursement may at any time petition the
11 court to waive reimbursement of all or any portion of the attorney's fees and
12 expenses. If the court is satisfied that reimbursement of the amount due will
13 impose undue hardship on the party or the party's immediate family, the court may
14 wave reimbursement of all or any portion of the amount due or modify the method
15 of payment.

16 **SECTION 4. AMENDMENT.** Subsections 1, 2, and 3 of section 29-07-01.1 of the
17 North Dakota Century Code are amended and reenacted as follows:

18 1. Lawyers provided to represent indigent persons must be compensated at a
19 reasonable rate to be determined by the commission on legal counsel for indigents.
20 Expenses necessary for the adequate defense of an indigent person prosecuted in
21 district court, other than for a violation of a home rule county's ordinance, when
22 approved by the commission, must be paid by the state. Expenses necessary for
23 the adequate defense of an indigent person prosecuted for violation of a home rule
24 county's ordinance must be paid by the home rule county. Expenses necessary for
25 the adequate defense of an indigent person prosecuted in municipal court, when
26 approved by the judge, must be paid by the city in which the alleged offense took
27 place. The city shall also pay the expenses in any matter transferred to district
28 court pursuant to section 40-18-15.1 and in any appeal taken to district court from
29 a judgment of conviction in municipal court pursuant to section 40-18-19. A
30 defendant requesting representation by counsel at public expense, or for whom
31 counsel provided at public expense without a request is considered appropriate by

- 1 the court, shall submit an application for indigent defense services. For an
2 application for indigent defense services in the district court, a nonrefundable
3 application fee of twenty-five dollars must be paid at the time the application is
4 submitted. The district court may extend the time for payment of the fee or may
5 waive or reduce the fee if the court determines the defendant is financially unable
6 to pay all or part of the fee. If the application fee is not paid before disposition of
7 the case, the fee amount must be added to the amount to be reimbursed under this
8 section. Application fees collected under this subsection must be forwarded for
9 deposit in the indigent defense administration fund established under subsection 4.
- 10 2. A defendant for whom counsel is provided at public expense, subject to this
11 subsection, shall reimburse the state, home rule county, or city such sums as the
12 state, home rule county, or city expends on the defendant's behalf.
- 13 a. At the time counsel is provided for a defendant, the court shall advise the
14 defendant of the defendant's potential obligation to reimburse the appropriate
15 governmental entity the amounts expended on behalf of the defendant.
- 16 b. ~~Within ninety days after its judgment of conviction or after conclusion of an~~
17 ~~appeal of its initial judgment of conviction, the court shall notify the defendant~~
18 ~~and the prosecuting attorney of the~~ Unless it finds that there is no likelihood
19 that the defendant is or will be able to pay attorney's fees and expenses, the
20 court, in its judgment of conviction, and in any order or amended judgment
21 entered following a revocation or other postjudgment proceeding, shall order
22 the defendant to reimburse the presumed amount of indigent defense costs
23 and expenses, as determined by the commission, and shall notify the
24 ~~defendant is obligated to reimburse if able to do so and of the defendant's~~
25 ~~right to a hearing on the reimbursement amount. It is a rebuttable~~
26 ~~presumption that reasonable reimbursement of costs and expenses consists~~
27 ~~of seventy five dollars per hour for counsel services plus reasonable~~
28 ~~expenses.~~ If the defendant or prosecutor requests a hearing within thirty days
29 of receiving notice under this subdivision, the court shall schedule a hearing at
30 which the ~~basis for the amount to be reimbursed~~ actual amount of attorney's
31 fees and expenses must be ~~demonstrated~~ shown. In determining the amount

1 of reimbursement and method of payment, the court shall consider the
2 financial resources of the defendant and the nature of the burden that
3 reimbursement of costs and expenses will impose.

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

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