

SENATE BILL NO. 2105

Introduced by

Judiciary Committee

(At the request of the Supreme Court)

1 A BILL for an Act to create and enact a new section to chapter 54-61 of the North Dakota
2 Century Code, relating to providing state-funded legal services in criminal cases; and to amend
3 and reenact subsection 1 of section 54-61-01 of the North Dakota Century Code, relating to
4 responsibilities of the commission on legal counsel for indigents.

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

6 **SECTION 1. AMENDMENT.** Subsection 1 of section 54-61-01 of the North Dakota Century
7 Code is amended and reenacted as follows:

8 1. The commission on legal counsel for indigents is established for the purpose of
9 developing and monitoring a process for the delivery of state-funded legal counsel
10 services for indigents and other criminal defendants which are required under the
11 Constitution of North Dakota and the United States Constitution and any applicable
12 statute or court rule. The commission shall provide indigent defense services for
13 indigent individuals determined by the court to be eligible for and in need of those
14 services pursuant to the standards and policies of the commission governing eligibility
15 for such services.

16 **SECTION 2.** A new section to chapter 54-61 of the North Dakota Century Code is created
17 and enacted as follows:

18 **Legal counsel services - Defendants found incompetent to self-represent -**
19 **Reimbursement of expenses.**

20 State-funded legal counsel services must be provided in accordance with this chapter if a
21 defendant knowingly and voluntarily refuses to obtain privately retained counsel and the court
22 determines the defendant is incompetent to represent himself or herself. In determining whether
23 self-representation by the defendant may impair the ability to secure or provide a fair trial, the
24 court shall consider and make a finding on the record regarding the following factors:

- 1 1. The defendant's age, education, experience, and other relevant personal background.
- 2 2. The results of any evaluation of the defendant ordered by the court.
- 3 3. The defendant's knowledge and understanding of the proceedings and the sentence
4 that may be imposed.
- 5 4. The impact of any mental impairment on the defendant's ability to present an effective
6 legal defense over time.
- 7 5. The presence of any mental impairment that may affect the defendant's ability to
8 adequately communicate with the court, witnesses, and, if applicable, the jury.
- 9 6. Any other factors considered relevant by the court.
- 10 A defendant who receives legal counsel services in accordance with this section shall reimburse
11 amounts expended on behalf of the defendant as provided in section 29-07-01.1.