

Sixty-second
Legislative Assembly
of North Dakota

ENGROSSED 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; to amend and
3 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; and to provide an
5 appropriation.

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

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

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

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

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

21 1. State-funded legal counsel services must be provided in accordance with this chapter
22 if a defendant knowingly and voluntarily refuses to obtain privately retained counsel
23 and the court determines the defendant is incompetent to represent himself or herself.
24 In determining whether self-representation by the defendant may impair the ability to

- 1 secure or provide a fair trial, the court shall consider and make a finding on the record
2 regarding the following factors:
- 3 a. The defendant's age, education, experience, and other relevant personal
4 background.
 - 5 b. The results of any evaluation of the defendant ordered by the court.
 - 6 c. The defendant's knowledge and understanding of the proceedings and the
7 sentence that may be imposed.
 - 8 d. The impact of any mental impairment on the defendant's ability to present an
9 effective legal defense over time.
 - 10 e. The presence of any mental impairment that may affect the defendant's ability to
11 adequately communicate with the court, witnesses, and, if applicable, the jury.
 - 12 f. Any other factors considered relevant by the court.
- 13 2. A defendant who receives legal counsel services in accordance with this section shall
14 reimburse amounts expended on behalf of the defendant as provided in section
15 29-07-01.1.

16 **SECTION 3. APPROPRIATION.** There is appropriated out of any moneys in the general
17 fund in the state treasury, not otherwise appropriated, the sum of \$70,500, or so much of the
18 sum as may be necessary, to the commission on legal counsel for indigents for the purpose of
19 providing legal counsel services to persons who refuse to retain their own counsel, if the court
20 has determined that they are incompetent to represent themselves, for the biennium beginning
21 July 1, 2011, and ending June 30, 2013.