

Introduced by

Senator Hogue

1 A BILL for an Act to create and enact a new subsection to section 29-26-22 of the North Dakota  
2 Century Code, relating to fees assessed for funding crime victim and witness programs; to  
3 amend and reenact sections 12.-32-08, 27-01-10, and 29-26-22 of the North Dakota Century  
4 Code, relating to costs for insufficient funds checks and assessment of court fees; to repeal  
5 section 29-29-22.2 of the North Dakota Century Code, relating to compromise of judgments for  
6 court fees and costs by county commissioners; to provide an effective date; and to provide an  
7 expiration date.

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

9 **SECTION 1. AMENDMENT.** Section 12.1-32-08 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of**  
12 **indigent defense costs and expenses - Conditions - Collection of restitution for**  
13 **insufficient funds checks –~~Continuing appropriation.~~**

14 1. Before imposing restitution or reparation as a sentence or condition of probation, the  
15 court shall hold a hearing on the matter with notice to the prosecuting attorney and to  
16 the defendant as to the nature and amount of restitution. The court, when sentencing a  
17 person adjudged guilty of criminal activities that have resulted in pecuniary damages,  
18 in addition to any other sentence the court may impose, shall order that the defendant  
19 make restitution to the victim or other recipient as determined by the court, unless the  
20 court states on the record, based upon the criteria in this subsection, the reason it  
21 does not order restitution or orders only partial restitution. Restitution must include  
22 payment to the owner of real property that is contaminated by the defendant in the  
23 manufacturing of methamphetamine for the cost of removing the contamination and  
24 returning the property to the property's condition before contamination and to any

1 other person that has incurred costs in decontaminating the property. In determining  
2 whether to order restitution, the court shall take into account:

- 3 a. The reasonable damages sustained by the victim or victims of the criminal  
4 offense, which damages are limited to those directly related to the criminal  
5 offense and expenses actually incurred as a direct result of the defendant's  
6 criminal action. This can include an amount equal to the cost of necessary and  
7 related professional services and devices relating to physical, psychiatric, and  
8 psychological care. The defendant may be required as part of the sentence  
9 imposed by the court to pay the prescribed treatment costs for a victim of a  
10 sexual offense as defined in chapters 12.1-20 and 12.1-27.2.
- 11 b. The ability of the defendant to restore the fruits of the criminal action or to pay  
12 monetary reparations, or to otherwise take action to restore the victim's property.
- 13 c. The likelihood that attaching a condition relating to restitution or reparation will  
14 serve a valid rehabilitational purpose in the case of the particular offender  
15 considered.

16 The court shall fix the amount of restitution or reparation, which may not exceed an  
17 amount the defendant can or will be able to pay, and shall fix the manner of  
18 performance of any condition or conditions of probation established pursuant to this  
19 subsection. The court shall order restitution be paid to the division of adult services for  
20 any benefits the division has paid or may pay under chapter 54-23.4 unless the court,  
21 on the record, directs otherwise. Any payments made pursuant to the order must be  
22 deducted from damages awarded in a civil action arising from the same incident. An  
23 order that a defendant make restitution or reparation as a sentence or condition of  
24 probation may, unless the court directs otherwise, be filed, transcribed, and enforced  
25 by the person entitled to the restitution or reparation or by the division of adult services  
26 in the same manner as civil judgments rendered by the courts of this state may be  
27 enforced.

- 28 2. ~~When~~Subject to limitations in this subsection, when the restitution ordered by the court  
29 under subsection 1 is the result of a finding that the defendant issued a check or draft  
30 without sufficient funds or without an account, the court shall impose as costs the  
31 greater of the sum of ten dollars or an amount equal to twenty-five percent of the

1 amount of restitution ordered but which may not exceed one thousand dollars. The  
2 the costs imposed under this subsection, however, may not exceed one thousand  
3 dollars. The state-employed clerks of district court shall remit the funds collected as  
4 costs under this subsection to the state treasurer for deposit in the restitution collection  
5 assistance fund. The funds deposited into the restitution collection assistance fund are  
6 appropriated to the judicial branch on a continuing basis for the purpose of defraying  
7 expenses incident to the collection of restitution, including operating expenses and the  
8 compensation of additional necessary personnel are imposed in a county in which the  
9 state's attorney or county-employed clerk, or both, is responsible for enforcement and  
10 distribution of restitution and maintaining victim records, the costs must be added to  
11 the restitution. The state's attorneys attorney and county-employed clerks of district  
12 court clerk shall remit the funds collected as costs under this subsection to the county  
13 treasurer to be deposited in the county general fund. If the costs are imposed in a  
14 county in which the state's attorney or county-employed clerk is not responsible for  
15 enforcement and distribution of restitution and maintaining victim records, the costs  
16 must be added to court fees imposed under section 29-26-22. The clerk of district  
17 court shall remit the funds collected as costs in accordance with subsection 2 of  
18 section 29-26-22.

- 19 3. The court may order the defendant to perform reasonable assigned work as a  
20 condition of probation, which assigned work need not be related to the offense  
21 charged, but must not be solely for the benefit of a private individual other than the  
22 victim.
- 23 4. a. Under section 12.1-32-07, the court may order that the defendant reimburse  
24 indigent defense costs and expenses as a condition of probation. Unless it finds  
25 that there is no likelihood that the defendant is or will be able to pay attorney's  
26 fees and expenses, the court, in its judgment of conviction, and in any order or  
27 amended judgment following a revocation or other postjudgment proceeding,  
28 shall notify the defendant, the defendant's probation officer, and the prosecuting  
29 attorney of the presumed amount of costs and expenses to be reimbursed, as  
30 determined by the commission on legal counsel for indigents, and of the right to a  
31 hearing on the reimbursement amount. The reimbursement amount must include

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

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

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

21          5. If the court finds that the defendant is unable to pay a fine, supervision fee,  
22          reimbursement for indigent defense costs and expenses, or restitution or reparations,  
23          the court may order the defendant to perform reasonable assigned work in lieu of all or  
24          part of a fine, a supervision fee, reimbursement for indigent defense costs and  
25          expenses, or restitution or reparations. The defendant may not perform reasonable  
26          assigned work in lieu of restitution or reparations unless the person entitled to  
27          restitution or reparations has consented in writing or on the record.

28          **SECTION 2. AMENDMENT.** Section 27-01-10 of the North Dakota Century Code is  
29          amended and reenacted as follows:

1       **27-01-10. Fee assessments for funding crime victim and witness programs.**

- 2       1. The governing body of a county may, by resolution, authorize the ~~district judges-~~  
3       ~~serving that county to assess~~ accept the fee provided under subdivision d of  
4       ~~subsection 3 of not more than twenty-five dollars~~2 of section 29-26-22 as part of a  
5       sentence imposed on a defendant who pleads guilty to or is convicted of a criminal  
6       offense or of violating a municipal ordinance for which the maximum penalty that may  
7       be imposed by law for the offense or violation includes imprisonment.
- 8       2. The governing body of a city may, by ordinance, authorize a municipal judge to assess  
9       a fee under subsection 3 of not more than twenty-five dollars as part of a sentence  
10      imposed on a defendant who pleads guilty to or is convicted of violating a municipal  
11      ordinance for which the maximum penalty that may be imposed under the ordinance  
12      for the violation includes imprisonment.
- 13      3. ~~The~~When authorizing a municipal judge to assess a fee, the governing body of the  
14      ~~county or city~~ may determine the amount of the fee to be assessed in all cases or it  
15      may authorize the ~~district or municipal~~ judge to determine the amount of the fee to be  
16      assessed in each case. The fee assessed under this section is in addition to any fine,  
17      penalty, costs, or ~~administrative~~ fee prescribed by law. The ~~district or municipal~~ judge  
18      may assess the fee when sentence is imposed or when sentence is suspended or  
19      imposition of sentence is deferred, unless the defendant is indigent and unable to pay  
20      the fee.
- 21      4. All fees paid to a district or municipal court under this section and subdivision d of  
22      subsection 2 of section 29-26-22 must be deposited monthly in the county or city  
23      treasury for allocation by the governing body of the county or city to one or more of the  
24      following programs as determined by the governing body:
- 25          a. A private, nonprofit domestic violence or sexual assault program.
- 26          b. A victim and witness advocacy program of which the primary function is to  
27              provide direct services to victims of and witnesses to crime.

28       **SECTION 3. AMENDMENT.** Section 29-26-22 of the North Dakota Century Code is  
29      amended and reenacted as follows:

1           **29-26-22. Judgment for fines - Court administration fee -- Community service-**  
2 **supervision fee**Disposition of fees - Special funds - Docketing and enforcement.

3           1. In all criminal cases except infractions, upon a plea or finding of guilt, the court shall  
4 impose ~~at the following~~ court administration fee in lieu of the assessment of court costs.  
5 ~~The court administration fee must include:~~ a fee of ~~one~~two hundred ~~twenty-five~~fifty  
6 dollars for a class B misdemeanor, ~~two~~four hundred dollars for a class A misdemeanor,  
7 ~~four~~six hundred dollars for a class C felony, ~~six~~eight hundred fifty dollars for a class B  
8 felony, and ~~nine hundred~~one thousand dollars for a class A or AA felony.

9           2. ~~In addition, in all criminal cases except infractions, the court administration fee must~~  
10 ~~include one hundred dollars. Of the additional one hundred dollar court administration~~  
11 ~~fee, the first seven hundred fifty thousand dollars collected per biennium must be~~  
12 ~~deposited in the indigent defense administration fund, which must be used for indigent~~  
13 ~~defense services in this state, and the next four hundred sixty thousand dollars~~  
14 ~~collected per biennium must be deposited in the court facilities improvement and~~  
15 ~~maintenance fund. After the minimum thresholds have been collected, one-half of the~~  
16 ~~additional court administration fee must be deposited in each fund. A fee imposed~~  
17 ~~under subsection 1 must be distributed in the following manner:~~

18           a. Fifty-eight and three-tenths percent must be deposited in the state general fund.

19           b. Eighteen and nine-tenths percent must be deposited in the indigent defense  
20 administration fund.

21           c. Fifteen and eight-tenths percent must be deposited in the court facilities  
22 improvement and maintenance fund.

23           d. Six and four-tenths of one percent must be deposited monthly in the county  
24 treasury if the county in which the fee is assessed has authorized acceptance of  
25 the fee by resolution under section 27-01-10. If the county has not adopted a  
26 resolution accepting the fee, the fee amount must be deposited in the state  
27 general fund.

28           e. Six-tenths of one percent must be deposited in the community service  
29 supervision fund, which must be used to provide community service grants  
30 subject to legislative appropriation.

1       3. ~~In addition to any court administration fees that may be imposed under subsections 1-~~  
2       ~~and 2, the court shall impose upon each defendant who receives a sentence that~~  
3       ~~includes community service a community service supervision fee of twenty-five dollars.~~  
4       ~~The community service supervision fee must be deposited in the community service~~  
5       ~~supervision fund. The fees deposited in this fund must be used to provide community~~  
6       ~~service supervision grants subject to legislative appropriations.~~

7       4. ~~A court may waive the administration fee or community service supervision~~  
8       ~~feerequired under subsection 1 upon a showing of indigency as provided in section~~  
9       ~~25-03.1-13. District court administration fees, exclusive of amounts deposited in the~~  
10      ~~indigent defense administration fund and the court facilities and improvement fund,~~  
11      ~~and forfeitures must be deposited in the state general fund. A judgment that the~~  
12      ~~defendant pay a fine or fees, or both, may be docketed and if docketed constitutes a~~  
13      ~~lien upon the real estate of the defendant in like manner as a judgment for money~~  
14      ~~rendered in a civil action. The court may allow the defendant to pay any assessed~~  
15      ~~administration fee or community service supervision fee in installments. When a~~  
16      ~~defendant is assessed administration fees or a community service supervision~~  
17      ~~feeunder subsection 1, the court may not impose at the same time an alternative~~  
18      ~~sentence to be served if the fees are not paid.~~

19      **SECTION 4.** A new subsection to section 29-26-22 of the North Dakota Century Code is  
20      created and enacted as follows:

21           For state fiscal years 2015 through 2018, if a county received more than nine  
22           thousand dollars in fees assessed for funding crime victim and witness programs  
23           under section 27-01-10 in fiscal year 2012, that county is entitled to receive in each  
24           fiscal year for deposit in the county treasury, six and four-tenths percent of the fee  
25           imposed under subsection 1 or the amount received by that county under section  
26           27-01-10 in state fiscal year 2012, whichever is greater. Any amount to which a county  
27           is entitled under this subsection exceeding six and four-tenths percent must be  
28           deducted from the amount of fees imposed in that county designated under subsection  
29           2 for deposit in the state general fund.

30      **SECTION 5. REPEAL.** Section 29-26-22.2 of the North Dakota Century Code is repealed.

1       **SECTION 6. EFFECTIVE DATE.** This Act is effective for court fees imposed after June 30,  
2 2015.

3       **SECTION 7. EXPIRATION DATE.** Section 4 of this Act is effective for fees imposed under  
4 section 29-26-22 through June 30, 2018, and after that date is ineffective.