

HOUSE BILL NO. 1041

Introduced by

Judiciary Committee

(At the request of the Supreme Court)

1 A BILL for an Act to amend and reenact section 12.1-32-08 of the North Dakota Century Code,
2 relating to restitution.

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

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

6 **12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of**
7 **indigent defense costs and expenses - Conditions - Collection of restitution for**
8 **insufficient funds checks - Continuing appropriation.**

9 1. ~~Before imposing restitution or reparation as a sentence or condition of probation, the~~
10 ~~court shall hold a hearing on the matter with notice to the prosecuting attorney and to~~
11 ~~the defendant as to the nature and amount of restitution.~~ The court, when sentencing a
12 person adjudged guilty of criminal activities that have resulted in pecuniary damages,
13 in addition to any other sentence the court may impose, shall order that the defendant
14 make restitution to the victim or other recipient as determined by the court. Restitution
15 must include payment to the owner of real property that is contaminated by the
16 defendant in the manufacturing of methamphetamine for the cost of removing the
17 contamination and returning the property to the property's condition before
18 contamination and to any other person that has incurred costs in decontaminating the
19 property. ~~In determining the amount of restitution, the court shall take into account the~~
20 ~~reasonable damages sustained by the victim or victims of the criminal offense, which~~
21 ~~damages are limited to those directly related to the criminal offense and expenses~~
22 ~~actually incurred as a direct result of the defendant's criminal action. This can include~~
23 ~~an amount equal to the cost of necessary and related professional services and~~
24 ~~devices relating to physical, psychiatric, and psychological care. The defendant may~~

1 be required as part of the sentence imposed by the court to pay the prescribed
2 treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and
3 12.1-27.2. The court shall fix the amount of restitution or reparation and shall fix the
4 manner of performance of any condition or conditions of probation established
5 pursuant to this subsection. The court shall order restitution be paid to the division of
6 adult services for any benefits the division has paid or may pay under chapter 54-23.4
7 unless the court, on the record, directs otherwise. Any payments made pursuant to the
8 order must be deducted from damages awarded in a civil action arising from the same
9 incident. An order that a defendant make restitution or reparation as a sentence or
10 condition of probation may, unless the court directs otherwise, be filed without filing
11 fee, transcribed, and enforced by the person entitled to the restitution or reparation or
12 by the division of adult services in the same manner as civil judgments rendered by
13 the courts of this state may be enforced. Upon thirty days' written notice to the victim's
14 last known address, the court may order the judgment imposing a duty to pay
15 restitution or reparation be docketed in the same manner as a civil judgment under
16 section 29-26-22.1.

- 17 2. If the court has retained jurisdiction after the sentencing hearing for claims of
18 restitution, to make a claim for restitution, the victim shall submit information by
19 affidavit or declaration and, as applicable, documentary evidence within the time
20 specified in the order. The information submitted must describe the items or elements
21 of loss, itemize the total dollar amounts of restitution claimed, and present facts and
22 evidence sufficient to support a finding the restitution is directly related to the offense
23 and the amount awarded. The prosecutor shall serve the defendant with a copy of the
24 information submitted by the victim no later than sixty days following sentencing.
- 25 3. The defendant may challenge restitution but must do so by requesting a hearing within
26 thirty days of being served with the written notification of the amount of restitution
27 requested. The hearing request must be made in writing and filed with the court. If no
28 hearing is requested, the court may enter a judgment ordering restitution. A defendant
29 may not challenge restitution after the thirty day time period has passed.
- 30 4. In determining the amount of restitution, the court shall take into account the
31 reasonable damages sustained by the victim or victims of the criminal offense, which

1 damages are limited to those directly related to the criminal offense and expenses
2 actually sustained as a direct result of the defendant's criminal action. This can include
3 an amount equal to the cost of necessary and related professional services and
4 devices relating to physical, psychiatric, and psychological care. The defendant may
5 be required as part of the sentence imposed by the court to pay the prescribed
6 treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and
7 12.1-27.2. The court shall fix the amount of restitution or reparation and shall fix the
8 manner of performance of any condition or conditions of probation established
9 pursuant to this subsection. **The court may order the defendant to disclose income and**
10 **assets on forms developed by the state court administrator to facilitate the setting of**
11 **an appropriate payment plan.** The court shall order restitution be paid to the division of
12 adult services for any benefits the division has paid or may pay to the victim under
13 chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments
14 made pursuant to the order must be deducted from damages awarded in a civil action
15 arising from the same incident.

16 5. An order that a defendant make restitution or reparation as a sentence or condition of
17 probation, unless the court directs otherwise, may be filed without filing fee,
18 transcribed, and enforced by the person entitled to the restitution or reparation or by
19 the division of adult services in the same manner as civil judgments rendered by the
20 courts of this state may be enforced. Upon thirty days' written notice to the victim's last
21 known address, the court may order the judgment imposing a duty to pay restitution or
22 reparation be docketed in the same manner as a civil judgment under section
23 29-26-22.1.

24 6. When the restitution ordered by the court under subsection 1 is the result of a finding
25 that the defendant issued a check or draft without sufficient funds or without an
26 account, the court shall impose as costs the greater of the sum of ten dollars or an
27 amount equal to twenty-five percent of the amount of restitution ordered. The costs
28 imposed under this subsection, however, may not exceed one thousand dollars. The
29 state-employed clerks of district court shall remit the funds collected as costs under
30 this subsection to the state treasurer for deposit in the restitution collection assistance
31 fund. The funds deposited into the restitution collection assistance fund are

1 appropriated to the judicial branch on a continuing basis for the purpose of defraying
2 expenses incident to the collection of restitution, including operating expenses and the
3 compensation of additional necessary personnel. The state's attorneys and
4 county-employed clerks of district court shall remit the funds collected as costs under
5 this subsection to the county treasurer to be deposited in the county general fund.

6 ~~3-7.~~ The court may order the defendant to perform reasonable assigned work as a
7 condition of probation, which assigned work need not be related to the offense
8 charged, but must not be solely for the benefit of a private individual other than the
9 victim.

10 ~~4.a.8.~~ Under section 12.1-32-07, the court may order that the defendant reimburse indigent
11 defense costs and expenses as a condition of probation.

12 a. Unless it finds that there is no likelihood that the defendant is or will be able to
13 pay attorney's fees and expenses, the court, in its judgment of conviction, and in
14 any order or amended judgment following a revocation or other postjudgment
15 proceeding, shall notify the defendant, the defendant's probation officer, and the
16 prosecuting attorney of the presumed amount of costs and expenses to be
17 reimbursed, as determined by the commission on legal counsel for indigents, and
18 of the right to a hearing on the reimbursement amount. The reimbursement
19 amount must include an application fee imposed under section 29-07-01.1 if the
20 fee has not been paid before disposition of the case and the court has not waived
21 payment of the fee.

22 b. If the defendant or prosecutor requests a hearing within thirty days of receiving
23 notice under this subdivision, the court shall schedule a hearing at which the
24 actual amount of attorney's fees and expenses must be shown. In determining
25 the amount and method of reimbursement, the court shall consider the financial
26 resources of the defendant and the nature of the burden that reimbursement of
27 costs and expenses will impose.

28 ~~b.c.~~ A defendant who is required to reimburse indigent defense costs and expenses
29 as a condition of probation and who is not willfully in default in that
30 reimbursement may at any time petition the court that imposed the condition to
31 waive reimbursement of all or any portion of the costs and expenses. If the court

1 is satisfied that reimbursement of the amount due will impose undue hardship on
2 the defendant or the defendant's immediate family, the court may waive
3 reimbursement of all or any portion of the amount due or modify the method of
4 payment.

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

9 5.9. If the court finds that the defendant is unable to pay a fine, supervision fee,
10 reimbursement for indigent defense costs and expenses, or restitution or reparations,
11 the court may order the defendant to perform reasonable assigned work in lieu of all or
12 part of a fine, a supervision fee, reimbursement for indigent defense costs and
13 expenses, or restitution or reparations. The defendant may not perform reasonable
14 assigned work in lieu of restitution or reparations unless the person entitled to
15 restitution or reparations has consented in writing or on the record.