

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO

### HOUSE BILL NO. 1417

Introduced by

Representatives Klemin, Stemen, Hanson

Senators Davison, Larson

1 A BILL for an Act to amend and reenact sections 12-59-15 and 12.1-01-04, subdivision b of  
2 subsection 3 of section 12.1-22-01, and sections 12.1-32-07, 12.1-32-08, and 29-07-01.1 of the  
3 North Dakota Century Code, relating to parole and probation violations and court fees; to  
4 provide for a legislative management study; to provide a penalty; and to provide an  
5 appropriation.

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

7 **SECTION 1. AMENDMENT.** Section 12-59-15 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **12-59-15. Breach of parole - Hearings - Order of recommitment.**

- 10 1. When it is alleged that a parolee has violated any of the terms or conditions of parole  
11 established by the parole board or by the department of corrections and rehabilitation,  
12 the director of the department of corrections and rehabilitation may issue a warrant for  
13 the arrest of the parolee after considering graduated sanctions and incentives used in  
14 response to a violation under section 12.1-32-07.
- 15 2. Upon issuance of a warrant of arrest for a parole violation, the running of the time  
16 period of parole must be suspended until the parole board issues a final order under  
17 this section. The parolee is entitled to credit for time spent in physical custody from the  
18 time of arrest until the time the parole board issues a final order.
- 19 3. The parolee is entitled to a preliminary hearing, as promptly as is convenient after the  
20 arrest and reasonably near the place of the alleged violation or arrest, to determine

1           whether there is probable cause to find that the parolee violated any of the terms and  
2           conditions of parole established by the board or by the department of corrections and  
3           rehabilitation.

4           4. The preliminary hearing must be conducted before the director of the department of  
5           corrections and rehabilitation or other hearing officer authorized by the director. The  
6           preliminary hearing must be conducted by a disinterested hearing officer not directly  
7           involved in the supervision of the parolee or by the person bringing the allegation of a  
8           parole violation.

9           5. If the hearing officer determines there is probable cause to find that the parolee has  
10          violated any of the terms and conditions of parole established by the board or by the  
11          department of corrections and rehabilitation, the board may redetermine the time  
12          remaining in the period of parole to reflect any portion of the period during which the  
13          parolee was not under supervision or not in the custody of law enforcement personnel  
14          in the state.

15          6. If the hearing officer determines there is probable cause to find that the parolee has  
16          violated any of the terms and conditions of parole established by the board or by the  
17          department of corrections and rehabilitation, the parolee must be returned to the  
18          physical custody of the department of corrections and rehabilitation, transferred to  
19          another correctional facility or the state hospital, or released from actual custody  
20          pursuant to such terms and conditions as may be established by the parole board or  
21          the department of corrections and rehabilitation, pending a final revocation hearing  
22          before the parole board. If the board determines at the final revocation hearing that the  
23          parolee has violated any:

24          a. Any of the terms and conditions of parole established by the board or by the  
25          department of corrections and rehabilitation, ~~it~~the board may order that the  
26          parolee be recommitted to the physical custody of the department of corrections  
27          and rehabilitation to serve all or part of the remaining time of the sentence that  
28          has not been served in custody.

29          b. A technical violation of parole, as defined in section 12.1-01-04, the board may  
30          order the parolee be recommitted to the physical custody of the department of  
31          corrections and rehabilitation to serve fifteen days for a first violation, up to thirty

1                   days for a second violation, up to ninety days for a third violation, and the full  
2                   remaining time of the sentence that has not been served in custody for a fourth  
3                   and subsequent violation.

4           7. At any hearing pursuant to this section a record must be made and the parolee shall  
5           have:

6           a. Written notice of the purpose of the hearing and the alleged violations.

7           b. The opportunity to be heard in person and present witnesses and documentary  
8           evidence.

9           c. The opportunity to confront and cross-examine adverse witnesses, unless the  
10           hearing officer determines that confrontation would create a risk of harm to the  
11           witness.

12           d. A written statement as to the reasons for the decision.

13           8. When the board determines the parolee has absconded, as defined in section  
14           12.1-01-04, from supervision, the board may order the parolee to pay the costs of  
15           being returned to the board. Moneys recovered under this subsection must be remitted  
16           to the department of corrections and rehabilitation.

17           **SECTION 2. AMENDMENT.** Section 12.1-01-04 of the North Dakota Century Code is  
18           amended and reenacted as follows:

19           **12.1-01-04. General definitions.**

20           As used in this title, unless a different meaning plainly is required:

21           1. "Absconded" means when a probationer, parolee, participant in a pretrial services  
22           program, or participant in a prosecution-led diversion program willfully avoids  
23           supervision by making their whereabouts unknown or fails to report to a supervising  
24           authority.

25           2. "Act" or "action" means a bodily movement, whether voluntary or involuntary.

26           ~~2.3.~~ "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions  
27           to act".

28           ~~3.4.~~ "Actor" includes, where relevant, a person guilty of an omission.

29           ~~4.5.~~ "Bodily injury" means any impairment of physical condition, including physical pain.

30           ~~5.6.~~ "Court" means any of the following courts: the supreme court, a district court, and  
31           where relevant, a municipal court.

- 1     ~~6-7.~~ "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar,  
2             stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles,  
3             or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that  
4             will expel, or is readily capable of expelling, a projectile by the action of a spring,  
5             compressed air, or compressed gas including any such weapon, loaded or unloaded,  
6             commonly referred to as a BB gun, air rifle, or  $\text{CO}_2$  gun; and any projector of a  
7             bomb or any object containing or capable of producing and emitting any noxious liquid,  
8             gas, or substance.
- 9     ~~7-8.~~ "Destructive device" means any explosive, incendiary or poison gas bomb, grenade,  
10            mine, rocket, missile, or similar device.
- 11    ~~8-9.~~ "Explosive" means gunpowders, powders used for blasting, all forms of high  
12            explosives, blasting materials, fuses (other than electric circuit breakers), detonators  
13            and other detonating agents, smokeless powders, and any chemical compounds,  
14            mechanical mixture, or other ingredients in such proportions, quantities, or packing  
15            that ignition by fire, by friction, by concussion, by percussion, or by detonation of the  
16            compound, or material, or any part thereof may cause an explosion.
- 17    ~~9-10.~~ "Firearm" means any weapon that will expel, or is readily capable of expelling, a  
18            projectile by the action of an explosive and includes any such weapon, loaded or  
19            unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun,  
20            bazooka, or cannon.
- 21    ~~10-11.~~ "Force" means physical action.
- 22    ~~11-12.~~ "Government" means:
- 23            a. The government of this state or any political subdivision of this state;
- 24            b. Any agency, subdivision, or department of the state or any political subdivision of  
25            the state, including the executive, legislative, and judicial branches;
- 26            c. Any corporation or other entity established by law to carry on any governmental  
27            function; and
- 28            d. Any commission, corporation, or agency established by statute, compact, or  
29            contract between or among governments for the execution of intergovernmental  
30            programs.

- 1 ~~12-13.~~ "Governmental function" includes any activity that one or more public servants are  
2 legally authorized to undertake on behalf of government.
- 3 ~~13-14.~~ "Harm" means loss, disadvantage, or injury to the person affected, and includes loss,  
4 disadvantage, or injury to any other person in whose welfare the person affected is  
5 interested.
- 6 ~~14-15.~~ "Included offense" means an offense:  
7 a. That is established by proof of the same or less than all the facts required to  
8 establish commission of the offense charged;  
9 b. That consists of criminal facilitation of or an attempt or solicitation to commit the  
10 offense charged; or  
11 c. That differed from the offense charged only in that it constitutes a less serious  
12 harm or risk of harm to the same person, property, or public interest, or because  
13 a lesser degree of culpability suffices to establish its commission.
- 14 ~~15-16.~~ "Includes" should be read as if the phrase "but is not limited to" were also set forth.
- 15 ~~16-17.~~ "Law enforcement officer" or "peace officer" means a public servant authorized by law  
16 or by a government agency or branch to enforce the law and to conduct or engage in  
17 investigations or prosecutions for violations of law.
- 18 ~~17-18.~~ "Local" means of or pertaining to any political subdivision of the state.
- 19 ~~18-19.~~ "Manifest injustice" means a specific finding by the court that the imposition of  
20 sentence is unreasonably harsh or shocking to the conscience of a reasonable  
21 individual, with due consideration of the totality of circumstances.
- 22 ~~19-20.~~ "Offense" means conduct for which a term of imprisonment or a fine is authorized by  
23 statute after conviction.
- 24 ~~20-21.~~ "Official action" includes a decision, opinion, recommendation, vote, or other exercise  
25 of discretion by any government agency.
- 26 ~~21-22.~~ "Official proceeding" means a proceeding heard or which may be heard before any  
27 government agency or branch or public servant authorized to take evidence under  
28 oath, including any referee, hearing examiner, commissioner, notary, or other person  
29 taking testimony or a deposition in connection with any such proceeding.
- 30 ~~22-23.~~ "Omission" means a failure to act.

- 1 ~~23-24.~~ As used in this title and in sections outside this title which define offenses, "person"  
2 includes, where relevant, a corporation, limited liability company, partnership,  
3 unincorporated association, or other legal entity. When used to designate a party  
4 whose property may be the subject of action constituting an offense, the word "person"  
5 includes a government that may lawfully own property in this state.
- 6 ~~24-25.~~ "Political subdivision" as used in this title and in any statute outside this title which  
7 defines an offense means a county, city, school district, township, and any other local  
8 governmental entity created by law.
- 9 ~~25-26.~~ "Possesses" means an individual has:  
10 a. Direct physical control of something on or around the individual's person; or  
11 b. The power and intention to exercise control over something accessible to but not  
12 on or around the individual's person.
- 13 ~~26-27.~~ "Public servant" as used in this title and in any statute outside this title which defines  
14 an offense means any officer or employee of government, including law enforcement  
15 officers, whether elected or appointed, and any person participating in the  
16 performance of a governmental function. The term does not include witnesses.
- 17 ~~27-28.~~ "Responsivity factors" means characteristics of an individual which affect the  
18 individual's ability to respond favorably or unfavorably to a treatment goal.
- 19 ~~29.~~ "Risk assessment" means an initial phase with a secondary process approved by the  
20 department of health and human services for the evaluation of the likelihood a person  
21 that committed an offense will commit another similar offense a validated, standardized  
22 actuarial tool used to identify potential risk factors that increase the likelihood an  
23 individual will reoffend and responsivity factors, when addressed, reduce the likelihood  
24 an individual will reoffend. The initial phase is an assessment tool that is administered  
25 by a trained ~~probation and parole officer~~ corrections professional. A predetermined  
26 score on the initial phase initiates the secondary process, approved by the department  
27 of health and human services, that includes may include a clinical interview,  
28 psychological testing, and verification through collateral information or  
29 psychophysiological testing, or both. The department of health and human services  
30 shall perform the secondary process of the risk assessment.

- 1 ~~28-30.~~ "Serious bodily injury" means bodily injury that creates a substantial risk of death or  
2 which causes serious permanent disfigurement, unconsciousness, extreme pain,  
3 permanent loss or impairment of the function of any bodily member or organ, a bone  
4 fracture, or impediment of air flow or blood flow to the brain or lungs.
- 5 ~~29-31.~~ "Signature" includes any name, mark, or sign written or affixed with intent to  
6 authenticate any instrument or writing.
- 7 ~~30-32.~~ "Substantial bodily injury" means a substantial temporary disfigurement, loss, or  
8 impairment of the function of any bodily member or organ.
- 9 ~~31-33.~~ "Technical violation" means a violation of a condition of probation or parole which does  
10 not involve:
- 11 a. An arrest or a summons issued by a peace officer;  
12 b. A criminal offense;  
13 c. A violation of a protection order or order prohibiting contact; or  
14 d. Absconding.
- 15 34. "Thing of value" or "thing of pecuniary value" means a thing of value in the form of  
16 money, tangible or intangible property, commercial interests, or anything else the  
17 primary significance of which is economic gain to the recipient.
- 18 ~~32-35.~~ "Tier 1 mental health professional" has the same meaning as provided under section  
19 25-01-01.

20 **SECTION 3. AMENDMENT.** Subdivision b of subsection 3 of section 12.1-22-01 of the  
21 North Dakota Century Code is amended and reenacted as follows:

- 22 b. "Dangerous weapon" means a weapon defined in ~~subsection 6~~ of section  
23 12.1-01-04 or a weapon the possession of which under the circumstances  
24 indicates an intent or readiness to inflict serious bodily injury.

25 **SECTION 4. AMENDMENT.** Section 12.1-32-07 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

- 28 1. When the court imposes probation upon conviction for a felony offense subject to  
29 section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section  
30 12.1-17-07.1, a second or subsequent violation of any domestic violence protection  
31 order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony

1 offense under chapter 39-08, the court shall place the defendant under the supervision  
2 and management of the department of corrections and rehabilitation. When the court  
3 imposes probation upon conviction or order of disposition in all other felony cases, the  
4 court may place the defendant under the supervision and management of the  
5 department of corrections and rehabilitation. In class A misdemeanor cases, the court  
6 may place the defendant under the supervision and management of the department of  
7 corrections and rehabilitation or other responsible party. In all other cases, the court  
8 may place the defendant under the supervision and management of a community  
9 corrections program other than the department of corrections and rehabilitation. A  
10 community corrections program means a program for the supervision of a defendant,  
11 including monitoring and enforcement of terms and conditions of probation set by the  
12 court.

- 13 2. ~~The conditions of probation must be such as the court in its discretion deems~~  
14 ~~reasonably necessary to ensure that the defendant will lead a law-abiding life or to~~  
15 ~~assist the defendant to do so. The court shall provide as an explicit condition of every~~  
16 ~~probation that the defendant not commit another offense during the period for which~~  
17 ~~the probation remains subject to revocation. The court shall order supervision costs~~  
18 ~~and fees of not less than fifty-five dollars per month unless the court makes a specific~~  
19 ~~finding on record that the imposition of fees will result in an undue hardship. If the~~  
20 ~~offender has not paid the full amount of supervision fees and costs before completion~~  
21 ~~or termination of probation, the court may issue an order, after opportunity for hearing,~~  
22 ~~to determine the amount of supervision fees and costs that are unpaid. The order may~~  
23 ~~be filed, transcribed, and enforced by the department of corrections and rehabilitation~~  
24 ~~in the same manner as civil judgments rendered by a district court of this state~~The  
25 department of corrections and rehabilitation may administer a risk assessment for the  
26 evaluation of each defendant when placed under the supervision and management of  
27 the department of corrections and rehabilitation. The results of the risk assessment  
28 may be used to set a level of supervision and management and develop an  
29 individualized case plan for the defendant. The case plan may include a list of  
30 responsivity factors and a plan to address any risk factors identified in the risk  
31 assessment.

- 1           3.    The court shall provide as an explicit condition of every probation that the defendant  
2                    may not possess a firearm, destructive device, or other dangerous weapon while the  
3                    defendant is on probation. Except when the offense is a misdemeanor offense under  
4                    section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-05, or 12.1-17-07.1, or  
5                    chapter 14-07.1, the court may waive this condition of probation if the defendant has  
6                    pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the  
7                    misdemeanor or infraction is the defendant's first offense, and the court has made a  
8                    specific finding on the record before imposition of a sentence or a probation that there  
9                    is good cause to waive the condition. The court may not waive this condition of  
10                   probation if the court places the defendant under the supervision and management of  
11                   the department of corrections and rehabilitation. The court shall provide as an explicit  
12                   condition of probation that the defendant may not willfully defraud a urine test  
13                   administered as a condition of probation. Unless waived on the record by the court,  
14                   the court shall also provide as a condition of probation that the defendant undergo  
15                   various agreed-to community constraints and conditions as intermediate measures of  
16                   the department of corrections and rehabilitation to avoid revocation, which may  
17                   include:
- 18                   a.    Community service;
  - 19                   b.    Day reporting;
  - 20                   c.    Curfew;
  - 21                   d.    Home confinement;
  - 22                   e.    House arrest;
  - 23                   f.    Electronic monitoring;
  - 24                   g.    Residential halfway house;
  - 25                   h.    Intensive supervision program;
  - 26                   i.    Up to five nonsuccessive periods of incarceration during any twelve-month  
27                   period, each of which may not exceed forty-eight consecutive hours;
  - 28                   j.    Participation in the twenty-four seven sobriety program; or
  - 29                   k.    One period of incarceration during a period of probation not to exceed thirty  
30                   consecutive days in lieu of a petition for revocation of probation.

- 1           4.   When imposing a sentence to probation, probation in conjunction with imprisonment,  
2                   or probation in conjunction with suspended execution or deferred imposition of  
3                   sentence, the court may impose such conditions as it deems appropriate and may  
4                   include any one or more of the following:
- 5           a.   Work faithfully at a suitable employment or faithfully pursue a course of study or  
6                   of career and technical education training that will equip the defendant for  
7                   suitable employment.
  - 8           b.   Undergo available medical or psychiatric treatment and remain in a specified  
9                   institution if required for that purpose.
  - 10          c.   Attend or reside in a facility established for the instruction, recreation, or  
11                   residence of persons on probation.
  - 12          d.   Support the defendant's dependents and meet other family responsibilities.
  - 13          e.   Make restitution or reparation to the victim of the defendant's conduct for the  
14                   damage or injury which was sustained or perform other reasonable assigned  
15                   work. When restitution, reparation, or assigned work is a condition of probation,  
16                   the court shall proceed as provided in subsection 1 or 2, as applicable, of section  
17                   12.1-32-08.
  - 18          f.   Pay a fine imposed after consideration of the provisions of section 12.1-32-05.
  - 19          g.   Refrain from excessive use of alcohol or any use of narcotics or of another  
20                   dangerous or abusable drug without a prescription.
  - 21          h.   Permit the probation officer to visit the defendant at reasonable times at the  
22                   defendant's home or elsewhere.
  - 23          i.   Remain within the jurisdiction of the court, unless granted permission to leave by  
24                   the court or the probation officer.
  - 25          j.   Answer all reasonable inquiries by the probation officer and promptly notify the  
26                   probation officer of any change in address or employment.
  - 27          k.   Report to a probation officer at reasonable times as directed by the court or the  
28                   probation officer.
  - 29          l.   Submit to a medical examination or other reasonable testing for the purpose of  
30                   determining the defendant's use of narcotics, marijuana, or other controlled  
31                   substance whenever required by a probation officer.

- 1 m. Refrain from associating with known users or traffickers in narcotics, marijuana,  
2 or other controlled substances.
- 3 n. Submit the defendant's person, place of residence, or vehicle to search and  
4 seizure by a probation officer at any time of the day or night, with or without a  
5 search warrant.
- 6 o. Serve a term of imprisonment of up to one-half of the maximum term authorized  
7 for the offense of which the defendant was convicted.
- 8 p. Reimburse the costs and expenses determined necessary for the defendant's  
9 adequate defense when counsel is appointed or provided at public expense for  
10 the defendant. When reimbursement of indigent defense costs and expenses is  
11 imposed as a condition of probation, the court shall proceed as provided in  
12 subsection 4 of section 12.1-32-08.
- 13 q. Provide community service for the number of hours designated by the court.
- 14 r. Refrain from any subscription to, access to, or use of the internet.
- 15 5. When the court imposes a sentence to probation, probation in conjunction with  
16 imprisonment, or probation in conjunction with suspended execution or deferred  
17 imposition of sentence, the defendant must be given a certificate explicitly setting forth  
18 the conditions on which the defendant is being released.
- 19 6. When it is alleged a probationer has absconded from supervision, the department of  
20 corrections and rehabilitation may issue an authority to hold until the probationer is  
21 apprehended. The department may dismiss the authority to hold, implement  
22 intermediate measures, or initiate a petition for revocation.
- 23 6.7. The court, upon notice to the probationer and with good cause, may modify or enlarge  
24 the conditions of probation at any time before the expiration or termination of the  
25 period for which the probation remains conditional. If the defendant violates a  
26 condition of probation at any time before the expiration or termination of the period, the  
27 court may continue the defendant on the existing probation, with or without modifying  
28 or enlarging the conditions, or may revoke the probation and impose any other  
29 sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of  
30 initial sentencing or deferment.

1     ~~7.8.~~   The court may continue or modify probation conditions or revoke probation for a  
2           violation of probation conditions occurring before the expiration or termination of the  
3           period of probation notwithstanding that the order of the court is imposed after the  
4           expiration or termination has occurred. The petition for revocation must be issued  
5           within sixty days of the expiration or termination of probation.

6           9.    The court may continue or modify probation conditions or revoke probation for a  
7           technical violation as defined in section 12.1-01-04. The court, only upon revoking a  
8           term of probation for a technical violation, may impose a term of incarceration as  
9           follows:

10          a.   Fifteen days for a first revocation;

11          b.   Up to thirty days for a second revocation;

12          c.   Up to ninety days for a third revocation; or

13          d.   The full remaining time of the sentence that has not been served in custody for a  
14          fourth or subsequent revocation.

15     ~~8.10.~~   Jurisdiction over a probationer may be transferred from the court that imposed the  
16           sentence to another court of this state with the concurrence of both courts. Retransfers  
17           of jurisdiction may also occur in the same manner. The court to which jurisdiction has  
18           been transferred under this subsection may exercise all powers permissible under this  
19           chapter over the defendant.

20     ~~9.11.~~   Notwithstanding any other provision of law, the court may authorize the defendant to  
21           assist law enforcement officers in an investigation of a criminal offense upon the terms  
22           and conditions as the court may require by written order. The court shall hold a  
23           hearing in camera before issuing an order under this subsection. The order must be  
24           sealed and is subject to inspection only upon order of the court.

25     ~~10.12.~~   The department of corrections and rehabilitation shall provide written notice to a  
26           defendant who is in the department's physical custody of any untried petition for  
27           revocation against the defendant of which the department has notice and of the  
28           defendant's right to make a request for final disposition of the petition.

29          a.    Upon notice of an untried petition for revocation of probation, the defendant may  
30           request final disposition of the petition. The defendant's request must be in  
31           writing and name the court in which the petition for revocation of probation is

- 1 pending and the prosecuting official charged with the duty of prosecuting the  
2 petition.
- 3 b. The defendant shall submit the request to the department. The department shall  
4 certify the term of commitment under which the defendant is being held, the time  
5 the defendant has served on the sentence, the time remaining to be served,  
6 sentence reduction credit the defendant has earned, the defendant's eligibility for  
7 parole, and whether the parole board has made a decision regarding the  
8 defendant's parole.
- 9 c. The department shall send by registered mail, return receipt requested, one copy  
10 of the request and certificate to the court and one copy to the prosecuting official  
11 to whom the request and certificate is addressed.
- 12 d. The petition for revocation of probation must be brought to the court for hearing  
13 within ninety days after the receipt of the request and certificate by the court and  
14 prosecuting official. If the petition is not brought to the court for hearing within the  
15 ninety days, the court shall dismiss the petition with prejudice.
- 16 e. The parties may stipulate for a continuance or the court may grant a continuance  
17 upon a showing of good cause by either party for a petition under this subsection.
- 18 f. If the defendant escapes from custody subsequent to the defendant's execution  
19 of a request for final disposition of a petition for revocation, the request is  
20 considered void.

21 13. The department shall use a matrix system of graduated sanctions and incentives and  
22 apply the presumptive sanctions and incentives for the appropriate supervision  
23 violations and successes.

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

26 **12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of**  
27 **indigent defense costs and expenses - Conditions - Collection of restitution for**  
28 **insufficient funds checks - Continuing appropriation.**

- 29 1. The court, when sentencing a person adjudged guilty of criminal activities that have  
30 resulted in pecuniary damages, in addition to any other sentence the court may  
31 impose, shall order that the defendant make restitution to the victim or other recipient

1 as determined by the court. Restitution must include payment to the owner of real  
2 property that is contaminated by the defendant in the manufacturing of  
3 methamphetamine for the cost of removing the contamination and returning the  
4 property to the property's condition before contamination and to any other person that  
5 has incurred costs in decontaminating the property.

6 2. If the court has retained jurisdiction after the sentencing hearing for claims of  
7 restitution, to make a claim for restitution, the victim shall submit information by  
8 affidavit or declaration and, as applicable, documentary evidence within the time  
9 specified in the order. The information submitted must describe the items or elements  
10 of loss, itemize the total dollar amounts of restitution claimed, and present facts and  
11 evidence sufficient to support a finding the restitution is directly related to the offense  
12 and the amount awarded. The prosecutor shall serve the defendant with a copy of the  
13 information submitted by the victim no later than sixty days following sentencing.

14 3. The defendant may challenge restitution but must do so by requesting a hearing within  
15 thirty days of being served with the written notification of the amount of restitution  
16 requested. The hearing request must be made in writing and filed with the court. If no  
17 hearing is requested, the court may enter a judgment ordering restitution. A defendant  
18 may not challenge restitution after the thirty-day time period has passed.

19 4. 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 sustained 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  
25 be required as part of the sentence imposed by the court to pay the prescribed  
26 treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and  
27 12.1-27.2. The court shall fix the amount of restitution or reparation and shall fix the  
28 manner of performance of any condition or conditions of probation established  
29 pursuant to this subsection. The court may order the defendant to disclose income and  
30 assets on forms developed by the state court administrator to facilitate the setting of  
31 an appropriate payment plan. The court shall order restitution be paid to the division of

1 adult services for any benefits the division has paid or may pay to the victim under  
2 chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments  
3 made pursuant to the order must be deducted from damages awarded in a civil action  
4 arising from the same incident.

5 5. An order that a defendant make restitution or reparation as a sentence or condition of  
6 probation, unless the court directs otherwise, may be filed without filing fee,  
7 transcribed, and enforced by the person entitled to the restitution or reparation or by  
8 the division of adult services in the same manner as civil judgments rendered by the  
9 courts of this state may be enforced. Upon thirty days' written notice to the victim's last  
10 known address, the court may order the judgment imposing a duty to pay restitution or  
11 reparation be docketed in the same manner as a civil judgment under section  
12 29-26-22.1.

13 6. When the restitution ordered by the court under subsection 1 is the result of a finding  
14 that the defendant issued a check or draft without sufficient funds or without an  
15 account, the court shall impose as costs the greater of the sum of ten dollars or an  
16 amount equal to twenty-five percent of the amount of restitution ordered. The costs  
17 imposed under this subsection, however, may not exceed one thousand dollars. The  
18 state-employed clerks of district court shall remit the funds collected as costs under  
19 this subsection to the state treasurer for deposit in the restitution collection assistance  
20 fund. The funds deposited into the restitution collection assistance fund are  
21 appropriated to the judicial branch on a continuing basis for the purpose of defraying  
22 expenses incident to the collection of restitution, including operating expenses and the  
23 compensation of additional necessary personnel. The state's attorneys and  
24 county-employed clerks of district court shall remit the funds collected as costs under  
25 this subsection to the county treasurer to be deposited in the county general fund.

26 7. The court may order the defendant to perform reasonable assigned work as a  
27 condition of probation, which assigned work need not be related to the offense  
28 charged, but must not be solely for the benefit of a private individual other than the  
29 victim.

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

- 1           a. ~~Unless it finds that there is no likelihood that the defendant is or will be able to~~  
2           ~~pay attorney's fees and expenses, the court, in its judgment of conviction, and in~~  
3           ~~any order or amended judgment following a revocation or other postjudgment~~  
4           ~~proceeding, shall notify the defendant, the defendant's probation officer, and the~~  
5           ~~prosecuting attorney of the presumed amount of costs and expenses to be~~  
6           ~~reimbursed, as determined by the commission on legal counsel for indigents, and~~  
7           ~~of the right to a hearing on the reimbursement amount. The reimbursement~~  
8           ~~amount must include an application fee imposed under section 29-07-01.1 if the~~  
9           ~~fee has not been paid before disposition of the case and the court has not waived~~  
10          ~~payment of the fee.~~
- 11          b. ~~If the defendant or prosecutor requests a hearing within thirty days of receiving~~  
12          ~~notice under this subdivision, the court shall schedule a hearing at which the~~  
13          ~~actual amount of attorney's fees and expenses must be shown. In determining~~  
14          ~~the amount and method of reimbursement, the court shall consider the financial~~  
15          ~~resources of the defendant and the nature of the burden that reimbursement of~~  
16          ~~costs and expenses will impose.~~
- 17          c. ~~A defendant who is required to reimburse indigent defense costs and expenses~~  
18          ~~as a condition of probation and who is not willfully in default in that~~  
19          ~~reimbursement may at any time petition the court that imposed the condition to~~  
20          ~~waive reimbursement of all or any portion of the costs and expenses. If the court~~  
21          ~~is satisfied that reimbursement of the amount due will impose undue hardship on~~  
22          ~~the defendant or the defendant's immediate family, the court may waive~~  
23          ~~reimbursement of all or any portion of the amount due or modify the method of~~  
24          ~~payment.~~
- 25          d. ~~If at any time the court finds that the defendant is able to reimburse costs and~~  
26          ~~expenses and has willfully failed to do so, the court may continue, modify, or~~  
27          ~~enlarge the conditions of probation or revoke probation as provided in~~  
28          ~~subsection 6 or 7, as applicable, of section 12.1-32-07.~~
- 29          9. ~~If the court finds that the defendant is unable to pay a fine, supervision fee,~~  
30          ~~reimbursement for indigent defense costs and expenses, or restitution or reparations,~~  
31          ~~the court may order the defendant to perform reasonable assigned work in lieu of all or~~

1 part of a fine, ~~a supervision fee, reimbursement for indigent defense costs and~~  
2 ~~expenses,~~ or restitution or reparations. The defendant may not perform reasonable  
3 assigned work in lieu of restitution or reparations unless the person entitled to  
4 restitution or reparations has consented in writing or on the record.

5 **SECTION 6. AMENDMENT.** Section 29-07-01.1 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **29-07-01.1. Payment of expenses for defense of indigents ~~–Reimbursement of~~**  
8 **~~indigent defense costs and expenses~~ - Indigent defense administration fund - Continuing**  
9 **appropriation.**

- 10 1. Lawyers provided to represent indigent persons must be compensated at a  
11 reasonable rate to be determined by the commission on legal counsel for indigents.  
12 Expenses necessary for the adequate defense of an indigent person prosecuted in  
13 district court, other than for a violation of a home rule county's ordinance, when  
14 approved by the commission, must be paid by the state. Expenses necessary for the  
15 adequate defense of an indigent person prosecuted for violation of a home rule  
16 county's ordinance must be paid by the home rule county. Expenses necessary for the  
17 adequate defense of an indigent person prosecuted in municipal court, when  
18 approved by the judge, must be paid by the city in which the alleged offense took  
19 place. The city shall also pay the expenses in any matter transferred to district court  
20 pursuant to section 40-18-06.2 or 40-18-15.1, in any appeal taken to district court from  
21 a judgment of conviction in municipal court pursuant to section 40-18-19, and in an  
22 appeal or postconviction matter seeking relief from a conviction resulting from violation  
23 of a municipal ordinance. A defendant requesting representation by counsel at public  
24 expense, or for whom counsel provided at public expense without a request is  
25 considered appropriate by the court, shall submit an application for indigent defense  
26 services. ~~For an application for indigent defense services in the district court, a~~  
27 ~~nonrefundable application fee of thirty-five dollars must be paid at the time the~~  
28 ~~application is submitted. The district court may extend the time for payment of the fee~~  
29 ~~or may waive or reduce the fee if the court determines the defendant is financially~~  
30 ~~unable to pay all or part of the fee. If the application fee is not paid before disposition~~  
31 ~~of the case, the fee amount must be added to the amount to be reimbursed under this~~

1           section. Application fees collected under this subsection must be forwarded for deposit  
2           in the indigent defense administration fund established under subsection 4.

3           2. A defendant for whom counsel is provided at public expense, subject to this  
4           subsection, shall reimburse the state, home rule county, or city such sums as the  
5           state, home rule county, or city expends on the defendant's behalf.

6           a. At the time counsel is provided for a defendant, the court shall advise the  
7           defendant of the defendant's potential obligation to reimburse the appropriate  
8           governmental entity the amounts expended on behalf of the defendant.

9           b. Unless it finds that there is no likelihood that the defendant is or will be able to  
10          pay attorney's fees and expenses, the court, in its judgment of conviction, and in  
11          any order or amended judgment entered following a revocation or other  
12          postjudgment proceeding, shall order the defendant to reimburse the presumed  
13          amount of indigent defense costs and expenses, as determined by the  
14          commission, and shall notify the defendant of the right to a hearing on the  
15          reimbursement amount. If the defendant or prosecutor requests a hearing within  
16          thirty days of receiving notice under this subdivision, the court shall schedule a  
17          hearing at which the actual amount of attorney's fees and expenses must be  
18          shown. In determining the amount of reimbursement and method of payment, the  
19          court shall consider the financial resources of the defendant and the nature of the  
20          burden that reimbursement of costs and expenses will impose.

21          c. A defendant who is required to reimburse indigent defense costs and expenses  
22          and who is not willfully in default in that reimbursement may at any time petition  
23          the court to waive reimbursement of all or any portion of the attorney's fees and  
24          expenses. If the court is satisfied that reimbursement of the amount due will  
25          impose undue hardship on the defendant or the defendant's immediate family,  
26          the court may waive reimbursement of all or any portion of the amount due or  
27          modify the method of payment.

28          3. The attorney general, the state's attorney of the home rule county, or the prosecuting  
29          attorney of the city in which the alleged offense took place, if reimbursement has not  
30          been received, shall seek civil recovery of any amounts expended on the defendant's  
31          behalf anytime the attorney general, state's attorney, or city attorney determines the

1            ~~person for whom counsel was appointed may have funds to repay the state, home rule-~~  
2            ~~county, or city within six years of the date such amount was paid on that person's~~  
3            ~~behalf. A person against whom civil recovery is sought under this subsection is entitled~~  
4            ~~to all exemptions accorded to other judgment debtors. The attorney general, state's~~  
5            ~~attorney, or prosecuting attorney may contract with a private sector collection agency~~  
6            ~~for assistance in seeking recovery of such funds. Before referring the matter to a~~  
7            ~~collection agency, the state's attorney shall notify the person who is the subject of the~~  
8            ~~collection action.~~

- 9            4. The indigent defense administration fund is a special fund in the state treasury. The  
10           state treasurer shall deposit in the fund all application fees collected under  
11           subsection 1. All moneys in the indigent defense administration fund are appropriated  
12           on a continuing basis to the commission on legal counsel for indigents to be used in  
13           the administration of the indigent defense system.

14           **SECTION 7. LEGISLATIVE MANAGEMENT STUDY - COURT FINES AND FEES.** During  
15           the ~~2024-25~~2025-26 interim, the legislative management shall consider studying court fines and  
16           fees, including fines and fees relating to travel permits, presentence investigations, the drug  
17           court program, electronic monitoring, alcohol monitoring, and the twenty-four seven sobriety  
18           program. The study must consider the total amount collected; rate of fees collected, including  
19           any money expended to collect the fines and fees; an evaluation of practices in other states;  
20           and the overall impacts on a defendant. The legislative management shall report its findings and  
21           recommendations, together with any legislation required to implement the recommendations, to  
22           the seventieth legislative assembly.

23           **SECTION 8. APPROPRIATION - COMMISSION ON LEGAL COUNSEL FOR**  
24           **INDIGENTS - OPERATING COSTS.** There is appropriated out of any moneys in the general  
25           fund in the state treasury, not otherwise appropriated, the sum of \$310,000, or so much of the  
26           sum as may be necessary, to the commission on legal counsel for indigents for the purpose of  
27           operating costs to replace lost revenue from the removal of the indigent defense application  
28           fees, for the biennium beginning July 1, 2025, and ending June 30, 2027.