

2023 HOUSE JUDICIARY

HB 1041

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1041
1/4/2023

Relating to restitution

Chairman Klemin opened the hearing on HB 1041 at 1:00 PM.

Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. VanWinkle, Rep. Vetter, Rep. Schneider. Absent: Rep. S. Olson

Discussion Topics:

- Process on awarding restitution
- Timeframes
- Civil judgment
- Amendment
- Explanation of criminal and civil cases

Sara Behrens: Attorney with State Administrators office. See testimony #12352

Chairman Klemin: Recommended an amendment with timeframes being more defined. Will work with Sara Behrens on wording.

Rep. Porter: District 34: In favor of the bill. Introduced Joshua Olson.

Joshua Olson, Mandan, ND: In support. Testimony #13066.

Adjourned hearing at 1:51 PM

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1041
1/11/2023

Relating to restitution.

Chairman Klemin opened the meeting on HB 1041 at 10:54 AM. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, , Rep. Schneider, Rep. VanWinkle, Rep. Vetter

Discussion Topics:

- Amendment

Sara Behren, ND Supreme Court: Introduced proposed amendment. Testimony # 27129

Rep. Vetter made a motion to amend # 23.8018.01001; Seconded by Rep. Schneider Roll

Call Vote:

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

13 Yes 0 No 0 Absent

Rep. Shannon Roers Jones moved for Do Pass As Amended; Seconded by Rep. Bahl

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	y

13 Yes 0 No 0 Absent

Roers Jones will carry the bill.

Closed hearing at 11:12 AM.

Delores Shimek, Committee Clerk

January 11, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1041

JA
1/11/23

Page 2, line 17, after "jurisdiction" insert "after the sentencing hearing"

Page 2, line 19, after "evidence" insert "within the time specified in the order"

Page 3, line 9, after the underscored period insert "The court may order the defendant to disclose income and assets on forms developed by the state court administrator to facilitate the setting of an appropriate payment plan."

Page 3, line 10, after "pay" insert "to the victim"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1041: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1041 was placed on the Sixth order on the calendar.

Page 2, line 17, after "jurisdiction" insert "after the sentencing hearing"

Page 2, line 19, after "evidence" insert "within the time specified in the order"

Page 3, line 9, after the underscored period insert "The court may order the defendant to disclose income and assets on forms developed by the state court administrator to facilitate the setting of an appropriate payment plan."

Page 3, line 10, after "pay" insert "to the victim"

Renumber accordingly

2023 SENATE JUDICIARY

HB 1041

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1041
3/14/2023

A bill relating to restitution.

10:00 AM Chairman Larson opened the meeting. Chairman Larson and Senators Luick, Estenson, Sickler, Paulson and Braunberger were present. Senator Myrdal is absent.

Discussion Topics:

- Timelines
- Procedures
- Victims

10:00 AM Sara Behrens, Staff Attorney, State Court Administrators Office, introduced the bill and provided written testimony #24731.

10:10 AM Joshua Olson testified in favor of the bill #24752.

10:16 AM Chairman Larson closed the public hearing.

10:17 AM Senator Luick moved to Do Pass the bill. Motion seconded by Senator Estenson.

10:17 AM Roll call vote is taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	AB

Motion passes 6-0-1.

Senator Sickler will carry the bill.

This bill will not affect workforce development.

10:18 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1041, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1041 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1041

House Bill 1041
House Judiciary Committee
Testimony Presented by Sara Behrens
January 4, 2022

Good afternoon Chairman Klemin, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today in support of House Bill 1041. Currently, section 12.1-32-08 requires a hearing be held regarding restitution in all cases. Case law has held that the only exception is when the parties enter into a plea agreement wherein the defendant specifically agrees to payment of restitution. No timeline is provided regarding the restitution process.

HB 1041 provides a procedure and timeline for requesting restitution and objecting to a restitution request. The State must collect restitution information from the victim and provide a copy to the defendant within 60 days after the sentencing. Rather than a required hearing, the defendant can request a hearing within 30 days of receiving the restitution information from the State if the defendant disagrees with the restitution being requested. If a hearing is not requested within the 30 days, the court may enter restitution. Following the 30 days, the defendant may no longer challenge the restitution amount.

HB 1041 also provides additional guidance regarding what is appropriately awarded as restitution. This should assist the court and all parties with determining the appropriate restitution amount.

We hope that this will make the restitution process more easily understood, more workable, and save resources by not requiring a hearing when the amount is not challenged. Thank you for your consideration and we urge a do pass.

Bill

If restitution is ordered criminally or civilly, the collection amount and procedure will be determined through use of forms PROB 48A and PROB 48C (net worth statement and cash flow statement)

*Example of punishment: Upon failure to pay the calculated restitution amount, consequences shall result in immediate revocation and class C felony plus assessments of additional fees of perhaps 10%.

Synopsis

Hello my name is, Joshua Olson, I live in Mandan and own an alcohol and drug treatment center in Bismarck which was embezzled from over the course of 5 years in the amount of 258,000 criminally and 554,000 civilly. After a very long time of court proceedings, charges were pressed, plea bargains were made, a deferred imposition and probation was sentenced and restitution was ordered.

Three years later, probation was revoked because there was a willful failure to pay that restitution. It was determined that he was making \$93,000 per year and only paying \$200 every month and a half.

During that revocation, the reason why such a small amount was paid is because there is no state statute providing a guideline for restitution payments.

After the revocation hearing, restitution was ordered again and the criminal was ordered to participate in the restitution program through DOCR.

See attached

Currently, the restitution program that was ordered is not being followed by parole and probation. Any monies collected are collected by garnishment through a collections agency that I hired and is no where near close to being collected in my lifetime.

REGISTER OF ACTIONS

CASE NO. 08-2017-CR-02715

Make Payment

State of North Dakota vs. Nathen P Hlibichuk

Case Type: **Felony**
 Date Filed: **09/05/2017**
 Location: **-- Burleigh County**
 Judicial Officer: **Bahr, Douglas A.**
 State's Attorney Case Number: **F1430-17-09**

PARTY INFORMATION

Defendant	Hlibichuk, Nathen P MANDAN, ND 58554	Male DOB: 1987	Attorneys Lloyd Clayton Suhr <i>Retained</i> 701-223-3874 x0000(W)
Plaintiff	State of North Dakota		David Lee Rappenecker 701-222-6672(W)

CHARGE INFORMATION

Charges: Hlibichuk, Nathen P	Statute	Level	Date
1. Theft-Take-Exceeds \$50,000	12.1-23-02(1)	Felony A	11/11/2011

EVENTS & ORDERS OF THE COURT

DISPOSITIONS

04/16/2018	Plea (Judicial Officer: Anderson, Sonna) 1. Theft-Take-Exceeds \$50,000 Guilty
04/16/2018	Disposition (Judicial Officer: Anderson, Sonna) 1. Theft-Take-Exceeds \$50,000 Pled Guilty
04/16/2018	Order Deferring Imposition of Sentence (Judicial Officer: Anderson, Sonna) 1. Theft-Take-Exceeds \$50,000 11/11/2011 (FA) 12.1-23-02(1) (C00568)
	Condition - Adult: 1. Deferred Imposition of Sentence, 04/16/2018 - 04/16/2021, Active 04/16/2018 2. Appendix A, 04/16/2018 - 04/16/2021, Active 04/16/2018 3. Supervised Probation, 3 years 04/16/2018 - 04/16/2021, Active 04/16/2018 4. Violate No Criminal Laws, 04/16/2018 - 04/16/2021, Active 04/16/2018 5. Submit to Fingerprints, 04/16/2018 - 04/16/2021, Active 04/16/2018 6. Good time, The Defendant is granted good time for any time spent in custody. 04/16/2018 - 04/16/2021, Active 04/16/2018 7. DNA Sample, The Defendant shall provide a sample of blood or other bodily fluids for DNA law enforcement identification purposes and inclusion in law enforcement identification databases as required by N.D.C.C. Ch. 31-13. The Defendant shall pay the cost of the collection of the DNA Sample. 04/16/2018 - 04/16/2021, Active 04/16/2018 8. Have No Contact, 04/16/2018 - 04/16/2021, Active 04/16/2018 Comment: Restitution shall be left open for 90 days.
	Fee Totals: Criminal Administration Fee \$900.00 Defense/Facility Admin Fee \$100.00 Victim-Witness Fee \$25.00 Fee Totals \$ \$1,025.00 Restitution \$258,016.24 Fee Totals \$ \$258,016.24
10/11/2021	Amended Disposition (Judicial Officer: Bahr, Douglas A.) Reason: Probation Violation 1. Theft-Take-Exceeds \$50,000 Order Revoking Sentence
10/11/2021	Amended Order Deferring Imposition of Sentence (Judicial Officer: Bahr, Douglas A.) Reason: Probation Violation 1. Theft-Take-Exceeds \$50,000 11/11/2011 (FA) 12.1-23-02(1) (C00568)
	Condition - Adult: 1. Supervised Probation, 5 years 10/11/2021 - 10/11/2026, Active 10/11/2021 2. Violate No Criminal Laws, 10/11/2021 - 10/11/2026, Active 10/11/2021

3. Submit to Fingerprints, 10/11/2021 - 10/11/2026, Active 10/11/2021
 4. DNA Sample, The Defendant shall provide a sample of blood or other bodily fluids for DNA law enforcement identification purposes and inclusion in law enforcement identification databases as required by N.D.C.C. Ch. 31-13. The Defendant shall pay the cost of the collection of the DNA Sample. 10/11/2021 - 10/11/2026, Active 10/11/2021
 5. Appendix A, 10/11/2021 - 10/11/2026, Active 10/11/2021
 6. Deferred Imposition of Sentence, 10/11/2021 - 10/11/2026, Active 10/11/2021
- Comment: Defendant is to participate in Restitution Program through the DOCR. Payments being garnished for civil matter should be applied towards restitution until restitution is paid in full.

OTHER EVENTS AND HEARINGS

- 09/05/2017 **Complaint Index # 1**
- 09/05/2017 **Initial Appearance (3:30 PM)** (Judicial Officer Reich, David E.)
Result: Hearing Ended
- 09/05/2017 **Consent Index # 2**
to ITV and Acknowledgment of Rights
- 09/05/2017 **Bond Index # 3**
Order (10% of \$5,000 cash, remain in ND, no contact with victims)
- 09/18/2017 **Notice of Hearing Index # 4**
- 09/21/2017 **Request Index # 5**
to Leave state of ND for training - GRANTED
- 10/23/2017 **Preliminary Hearing and/or Arraignment (10:00 AM)** (Judicial Officer Hill, James S)
Result: Preliminary Hearing Held
- 10/23/2017 **Information Index # 6**
- 10/23/2017 **Scheduling Order Index # 7**
- 02/12/2018 **Final Dispositional Conference (1:30 PM)** (Judicial Officer Romanick, Bruce A.)
Result: Hearing Ended
- 02/12/2018 **Notice of Hearing Index # 8**
- Amended Trial and Final Disso Hearing
- 04/05/2018 **Letter Index # 9**
from Defendant
- 04/06/2018 **Response Index # 10**
Granting Permission to Travel Out of State
- 04/09/2018 **Notice of Hearing Index # 11**
- Amended Final Dispo Hearing
- 04/12/2018 **CANCELED Final Dispositional Conference (11:00 AM)** (Judicial Officer Anderson, Sonna)
Change of Plea
04/23/2018 Reset by Court to 04/12/2018
- 04/12/2018 **Notice of Hearing Index # 12**
- Change of Plea
- 04/16/2018 **Change of Plea (9:00 AM)** (Judicial Officer Anderson, Sonna)
Result: Hearing Ended
- 04/17/2018 **Appendix A Index # 13**
- 04/18/2018 **Proposed Order Index # 14**
Order Deferring Imposition of Sentence (M.Lawrence)
- 04/19/2018 **Order Deferring Imposition of Sentence Index # 15**
- 04/25/2018 **CANCELED Felony Jury Trial (9:00 AM)** (Judicial Officer Anderson, Sonna)
Change of Plea
02/21/2018 Reset by Court to 04/25/2018
- 05/30/2018 **Notice Index # 16**
Notice of Motion to Amend Judgment
- 05/30/2018 **Motion to Modify an Order Index # 17**
Motion to Amend Judgment
- 05/30/2018 **Exhibit Index # 18**
State's Exhibit 1 (Forensic Accounting Report)
- 05/30/2018 **Proposed Order Index # 19**
(Proposed) Order to Amend Judgment (K.Neufeld)
- 05/30/2018 **Service of Motion Index # 20**
Affidavit of Service (Nathan Hlibichuk)
- 06/08/2018 **Letter Index # 21**
Email with Judge and Nathan Hlibichuk
- 06/18/2018 **Notice of Hearing Index # 22**
- Restitution Hearing
- 08/15/2018 **Order Index # 23**
- 08/30/2018 **Transcript Index # 24**
Change of Plea Hearing April 16, 2018
- 09/20/2018 **Notice Index # 25**
Notice of Appearance of Monte Rogneby for Victims Josh Olson and New Freedom Center
- 09/20/2018 **Service Document Index # 26**
Affidavit of Service Upon Karlei Neufeld
- 09/27/2018 **Restitution Hearing (8:30 AM)** (Judicial Officer Bahr, Douglas A.)
Result: Hearing Ended
- 09/27/2018 **Exhibit Index # 27**
Exhibit #: #1. Exhibit Description: Forensic Accounting Report. (Received)State
- 09/27/2018 **Exhibit Index # 28**
Exhibit #: #2. Exhibit Description: Transaction Listing. (Received)State
- 09/27/2018 **Exhibit Index # 29**
Exhibit #: #3. Exhibit Description: Eide Bailly Bill. (Received)State
- 10/01/2018 **Order Index # 30**
for Restitution
- 05/17/2021 **Petition for Revocation Index # 31**
Petition for Revocation of Probation
- 05/17/2021 **Proposed Order Index # 32**

1 (proposed) Order to Apprehend (J.Lawyer) (not signed)

05/25/2021 Proposed Order Index # 33
to Appear (by State)

05/26/2021 Criminal Summons Issued Index # 34
Order to Appear- Out for Service

05/08/2021 Criminal Summons Returned Index # 35
(No date)

06/14/2021 Proposed Order Index # 36
(proposed) Order to Appear (by the State)

06/16/2021 Criminal Summons Issued Index # 37
Order to Appear - Out for Service

07/08/2021 Sheriff's Return Served Index # 38
Sheriff's return - served on Nathen Hlibichuk

07/08/2021 Order Index # 39
Order to Appear - served on Nathen Hlibichuk

07/08/2021 Criminal Summons Served Index # 40

07/19/2021 Substitution of Attorneys Index # 41
Substitution of Attorney

07/19/2021 Service Document Index # 42
Affidavit of Service Upon Karlei Neufeld

07/21/2021 Revocation of Probation Hearing (9:00 AM) (Judicial Officer Bahr, Douglas A.)
via ZOOM - Meeting ID 825 8044 7354 or Call 1-669-900-9128
Result: Hearing Ended

07/21/2021 Bond Index # 43

07/21/2021 Service Document Index # 44

08/02/2021 Notice of Hearing Index # 45
- Remote Hearing - Revocation - ZOOM

09/07/2021 Notice Index # 46
Notice of Appearance-Atty Suhr

09/07/2021 Rule 16 Discovery Request Index # 47
Rule 16 Discovery Request

09/07/2021 Service Document Index # 48
Certificate of Service-Burleigh SAO

09/08/2021 Revocation of Probation Hearing (3:30 PM) (Judicial Officer Bahr, Douglas A.)
via ZOOM - meeting ID 206 201 3100 - zoom.com or call 669-900-9128
Result: Hearing Ended

09/08/2021 Notice of Hearing Index # 49
- Remote Revocation Hearing - ZOOM

09/22/2021 Response Index # 50
First Response to and Request for Discovery and Notice of Intent to Use Evidence

09/22/2021 Service Document Index # 51
Unsworn Declaration of Service and Notice of Intent to Use Evidence - Jackson Lofgren and Lloyd Suhr

09/30/2021 Response Index # 52
Second Response to and Request for Discovery and Notice of Intent to Use Evidence

09/30/2021 Service Document Index # 53
Unsworn Declaration of Service by Electronic Filing - Lloyd Suhr

10/08/2021 Exhibit Index # 54
State's Exhibit 1 - Collection Status Letter

10/08/2021 Exhibit Index # 55
State's Exhibit 2 - Earnings Statement

10/08/2021 Service Document Index # 56
Unsworn Declaration of Service by Electronic Filing - Lloyd Suhr

10/11/2021 Revocation of Probation Hearing (9:15 AM) (Judicial Officer Bahr, Douglas A.)
Via ZOOM meeting ID 856 1408 6685 or call 1-669-900-9128 OR 1-646-558-8656
Result: Hearing Ended

10/11/2021 Proposed Judgment Index # 57
Amended

10/11/2021 Criminal Judgment Index # 58
Amended

FINANCIAL INFORMATION

Make Payment

Defendant Hlibichuk, Nathen P		
Total Financial Assessment		259,041.24
Total Payments and Credits		5,805.00
Balance Due as of 01/03/2023		253,236.24
04/19/2018	Transaction Assessment	1,025.00
10/01/2018	Transaction Assessment	258,016.24
11/08/2018	Web Payment	Nathen Hlibichuk (50.00)
01/2019	Web Payment	Nathen Hlibichuk (55.00)
02/2019	Web Payment	Nate Hlibichuk (100.00)
03/02/2019	Web Payment	Nate hlibichuk (200.00)
04/02/2019	Web Payment	Nate hlibichuk (200.00)
05/09/2019	Web Payment	Nate hlibichuk (200.00)
06/07/2019	Web Payment	Nate Hlibichuk (200.00)
07/23/2019	Web Payment	Nate Hlibichuk (200.00)
09/25/2019	Web Payment	Nate Hlibichuk (400.00)

10/31/2019	Web Payment	Receipt # 08-2019-16243	Nate Hlibichuk	(200.00)
12/06/2019	Web Payment	Receipt # 08-2019-18466	Nate Hlibichuk	(200.00)
03/09/2020	Web Payment	Receipt # 08-2020-4138	Nate hlibichuk	(400.00)
04/13/2020	Web Payment	Receipt # 08-2020-5416	Nate hlibichuk	(200.00)
06/10/2020	Web Payment	Receipt # 08-2020-7575	Nate hlibichuk	(600.00)
~1/08/2021	Web Payment	Receipt # 08-2021-394	Nate Hlibichuk	(200.00)
/28/2021	Web Payment	Receipt # 08-2021-2741	Nate Hlibichuk	(300.00)
u3/31/2021	Web Payment	Receipt # 08-2021-4689	Nate hlibichuk	(500.00)
02/17/2022	Tax Intercept	Receipt # TI-2022-00437	ND Tax Commissioner	(1,000.00)
05/06/2022	Web Payment	Receipt # 08-2022-5620	Nate Hlibichuk	(50.00)
06/30/2022	Web Payment	Receipt # 08-2022-8364	Nate Hlibichuk	(50.00)

REQUEST FOR NET WORTH STATEMENT FINANCIAL RECORDS

OFFENDER'S FULL NAME

DOCKET NUMBER

All entries on the Net Worth Statement must be accompanied by supporting documentation. Provide the probation officer with all records listed below that are applicable to your financial statements, along with your completed Net Worth Statement by the close of business _____.

ASSETS

Section A – Bank Accounts

- ◆ Most recent bank account statements (e.g., checking, savings, credit union, money market, brokerage, Certificate of Deposit, IRA, ROTH IRA, KEOGH, 401K, or thrift savings account) for a three-month period.

Section B – Securities

- ◆ Most recent securities account statements (e.g., brokerage, annuities, life insurance) for a three-month period.

Section C – Notes & Accounts Receivable

- ◆ Copy of signed note receivable.

Section D – Life Insurance

- ◆ Copy of all life insurance policies (e.g., whole life, variable life, term).

Section E – Safe Deposit Boxes or Storage Facilities

- ◆ Copy of most recent rental invoice for all safe deposit boxes or storage facility rentals within the past year, including receipts or verification of content value.

Section F – Motor Vehicles

- ◆ Copy of vehicle registration and title for all vehicles owned or leased.

Section G – Real Estate

- ◆ Copy of purchase agreement, deeds, and escrow statement for all real property.

Section H – Mortgage Loans Owed To You

- ◆ Copy of the sales agreement and escrow statement for all real property.

Section I – Other Assets

- ◆ Copy of purchase invoice and appraisal (if already previously obtained), and documentation to verify the fair market value of the asset.

Section J – Anticipated Assets

- ◆ Copy of documentation to verify future receipt of anticipated asset, (e.g., claim or lawsuit filings, profit sharing plan and current statement, pension plan and current statement, inheritance documents, copy of all trusts, trust income tax returns), and most recent accounting reflecting the value of your interest and income from the trust.

Section K – Business Holdings

- ◆ In addition to providing the information requested in Section K and completing Section N, provide copies of all income tax returns for each business you had an ownership interest in (e.g., shareholder, partner, proprietor) or an affiliation with (e.g., officer, director, board member, agent, associate) within the last five years. Also provide all financial statements for each business, prepared by you or your accountant, within the past five years.

Business Accounts Receivable

- ◆ Copy of current month's billing statements that verify business accounts receivable.

Business Accounts Payable

- ◆ Copy of current month's vendor invoices that verify business accounts payable.

Section L – Income Tax Returns

- ◆ Copy of the five most recent years' income tax returns filed for: Individual (Form 1040), Partnership (Form 1065), Corporation (Form 1120), S Corporation (Form 1120S), and Limited Liability Company (Form 1065). Be sure to include all related schedules and forms. Provide a written explanation for any returns not filed.

Section M – Transfer of Assets

- ◆ Copy of the bill of sale, documentation of funds received from sale (e.g., a personal or business check, cashiers check or money order), copy of vehicle registration and title of sold vehicle, and escrow closing statements for any real estate sold since the date of your arrest.

Section N – Names of Shareholders or Partners

- ◆ Copy of Articles of Incorporation for all corporations you own or have an interest in. Copy of partnership agreement for all partnerships you have an ownership interest in.

Section O – Assets You Will Liquidate

- ◆ Assets available for payment of criminal monetary penalties

REQUEST FOR NET WORTH STATEMENT FINANCIAL RECORDS (cont.)

LIABILITIES

<p>Section A – Charge Accounts</p> <ul style="list-style-type: none">◆ Copy of most current billing statement for all charge accounts (e.g., credit cards, revolving charge cards, and department store cards) and lines of credit (e.g., bank line of credit). <p>Section B – Other Debts</p> <ul style="list-style-type: none">◆ Copy of all notes payable, mortgage loans, current statement of delinquent taxes due, and statements documenting child support/ alimony obligations and payment history. <p>Section C – Party to Civil Suit</p> <ul style="list-style-type: none">◆ Copy of all civil suit filings and judgments. <p>Section D – Bankruptcy Filings</p> <ul style="list-style-type: none">◆ Copy of all bankruptcy filings including petition, financial statements submitted, final judgment and order of discharge.	<p>OTHER RECORDS REQUESTED</p>
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ADDITIONAL INSTRUCTIONS:

A personal interview has been scheduled for you with:

_____ on _____
U.S. Probation Officer Date

at _____ Office Location
Time

Telephone _____

Print

Save As...

Reset

Last Name	First Name	Middle Name	Social Security Number

Instructions for Completing Net Worth Statement

Having been convicted in the United States District Court, you are required to prepare and file with the probation officer an affidavit fully describing your financial resources, including a complete listing of all assets you own or control as of this date and any assets you have transferred or sold since your arrest. Amendments were made to 18 U.S.C. §§ 3663(a)(1)(B)(i), 3664(d)(3), and 3664(f)(2), and Rule 32(b)(4)(F) to clarify that the assets owned, jointly owned, or controlled by a defendant, and liabilities are all relevant to the court's decision regarding the ability to pay. Your Net Worth Statement should include assets or debts that are yours alone (I-Individual), assets or debts that are jointly (J-Joint) held by you and a spouse or significant other, assets or debts that are held by a spouse or significant other (S-Spouse or Significant Other) that you enjoy the benefits of or make occasional contributions toward, and assets or debts that are held by a dependent (D-Dependent) that you enjoy the benefits of or make occasional contributions toward.

If you are placed on probation or supervised release (or other types of supervision), you may be periodically required to provide updated information fully describing your financial resources and those of your dependents, as described above, to keep a probation officer informed concerning compliance with any condition of supervision, including the payment of any criminal monetary penalties imposed by the court (see 18 U.S.C. § 3603).

Please complete the Net Worth Statement in its entirety. You must answer "None" to any item that is not applicable to your financial condition. Attach additional pages if you need more space for any item. All entries must be accompanied by supporting documentation (see Request for Net Worth Statement Financial Records (Prob. 48A)). Initial and date each page (including any attached pages). Also, sign, date, and attach the Declaration of Defendant or Offender Net Worth & Cash Flow Statements (Prob. 48D).

Last Name - _____

NET WORTH STATEMENT

NOTE: I = Individual J = Joint S = Spouse/Significant Other D = Dependent

ASSETS

BANK ACCOUNTS (Include all personal and businesses checking and savings accounts, credit unions, money markets, certificates of deposit, IRA and KEOGH accounts, Thrift Savings, 401K, etc.)

Section A	I/J S/D	Name of Institution	Address	Type of Account	Account Number	Personal or Commercial	Balance	

SECURITIES (Include all stocks in public corporations, stocks in businesses you own or have an interest in, bonds, mutual funds, U.S. Government securities, etc.)

Section B	I/J S/D	Name and Kind of Security	Location of Security	Number of Units	Fair Market Value	

MONEY OWED TO YOU BY OTHERS (Include all money owed to you by any person or entity.)

Section C	I/J S/D	Name and Address of Debtor	Amount Owed to You	Reason Owed to You	Date Money Loaned	Relationship to Debtor (if any)	Monthly Payment or Date Full Payment Expected	Is Debt Collectible ?

Initials _____ Date _____

Last Name -								
Section D	LIFE INSURANCE (Include type of policy [whole life, variable, or term], face amount [the stated amount of coverage] and cash surrender value [the value of the investment portion of a whole life or variable policy].)							
	I/J S/D	Name and Address of Company and Name of Beneficiary	Policy Number	Type of Policy	Face Amount	Cash Surrender Value	Amount Borrowed	Amount You Can Borrow
Section E	SAFE DEPOSIT BOXES OR STORAGE SPACE FACILITY (Include all safe deposit boxes or storage space you rent or places you have access to in which others are holding assets or items belonging to you.)							
	I/J S/D	Name and Address of Box or Facility Location	Box Number or Space	Contents			Fair Market Value	
Section F	MOTOR VEHICLES (Include all cars, trucks, mobile homes, motorcycles, all terrain vehicles, boats, airplanes, etc.)							
	I/J S/D	Year, Make & License Number/Vehicle Identification Number	Mileage	Loan/Lease Balance (if any)	Date Loan/Lease Will be Paid Off or Ends	Monthly Payment	Fair Market Value	
Section G	REAL ESTATE (Include property, parcels, lots, timeshares, and developed land with buildings.)							
	I/J S/D	Real Estate Address (include county and state)/ Mortgage Company or Lien Holder	Purchase Date	Purchase Price	Mortgage Balance (if any)	Date Mortgage Will be Paid Off	Monthly Payment	Fair Market Value
Section H	MORTGAGE LOANS OWED TO YOU (Include name, address, and relationship [if any] to the mortgagee [the party that bought the real estate you sold and is making payments to you].)							
	I/J S/D	Mortgagee (name & address)/ Relationship to Mortgagee	Mortgage Balance	Date Mortgage Will be Paid Off	Balloon Payment? If Yes, Date?	Monthly Payment	Is Debt Collectible?	

Last Name -								
Section I	OTHER ASSETS (Include any cash on hand, jewelry, art, paintings, coin collections, stamp collections, collectibles, antiques, copyrights, patents, etc.)							
	I/J S/D	Description	Loan Balance (if any)	Date Loan Will be Paid Off	Monthly Payment	Where is Asset Located?	Fair Market Value	
Section J	ANTICIPATED ASSETS (Include any assets you expect to receive or control from lawsuits for compensation or damages, profit sharing, pension plans, inheritance, wills, or as an executor or administrator of any succession or estate.)							
	I/J S/D	Amount Received or Expected to Receive	Date Expected to Receive	Reason You Expect This	Name and Address of Person or Company That Can Verify This (e.g., attorney, financial institution, executor)			
Section K	TRUST ASSETS (Include all trusts in which you are a grantor or donor [the person who establishes the trust], the trustee or fiduciary [who controls the trust assets and income or the beneficiary who has or will receive benefits from the trust].)							
	I/J S/D	Name of Trust/ Taxpayer ID#	Value of Trust	Your Annual Income From Trust	Your Interest in Trust Assets			
Section K	BUSINESS HOLDINGS (Include all businesses in which you have an ownership interest or with which you had an affiliation within the last three years; e.g., self-employed sole proprietor, officer, shareholder, board member, partner, associate, etc.) Complete Section N (attach additional pages, if necessary).							
	I/J S/D	Name and Address of Business/ Taxpayer I.D.#	Type of Business Entity	Industry of Business	Date Business Started	Capital Investment to Start	Your Ownership Interest Percentage	Sale Price or Fair Market Value of Your Interest

Last Name -

Section L	INCOME TAX RETURNS		
	Type of Income Tax Return Filed	Last Filing Year	Years of Last 5 Income Tax Returns You Will Submit to the Probation Officer
	Individual (Form 1040)		
	Partnership/Limited Liability Company (Form 1065)		
	Corporation (Form 1120)		
	S Corporation (Form 1120S)		

Section M	TRANSFER OF ASSETS (Include any assets you have transferred or sold since the date of your arrest with a cost or fair market value of more than \$500.00. Also list any assets that someone else is holding on your behalf.)						
	I/J S/D	Description of Asset/ Reason Transferred/Sold	Date of Transfer/Sale	Original Cost	Amount You Received, if Any	Name of Purchaser or Person Holding the Asset	Sale Price or Fair Market Value at Transfer

Section N	NAMES OF SHAREHOLDERS OR PARTNERS (Include all shareholders, officers, and/or partners, indicating each respective ownership interest.)		
	Name of Business	Names of Shareholders/Partners	Ownership Interest Percentage

Initials _____ Date _____

Last Name -			
Section O	ASSETS YOU WILL LIQUIDATE (Include all assets you intend to liquidate to satisfy any criminal monetary penalties that may be imposed.)		
	Asset Description	Estimated Value of Asset	Date You Will Liquidate
	Current Location of Asset (if real property, county and state)		
Section P	PROSPECT OF INCREASE IN ASSETS (Give a general statement of the prospective increase of the value of any asset you own.)		

Last Name - _____							
LIABILITIES							
Section A	CHARGE ACCOUNTS AND LINES OF CREDIT (Include all bank credit cards, lines of credit, revolving charge accounts, etc.)						
	I/J S/D	Type of Account or Card	Name and Address of Creditor	Credit Limit	Amount Owed	Credit Available	Minimum Monthly Payment
Section B	OTHER DEBTS (Include mortgage loans, notes payable, delinquent taxes, and child support.)						
	I/J S/D	Owed To	Address	Relationship (if any)	Amount Owed	Reason Owed	Monthly Payment
Section C	PARTY TO CIVIL SUIT (Include any civil lawsuits you have ever been a party to.)						
	I/J S/D	Name of Plaintiff in the Case	Court of Jurisdiction and County	Case Number	Date of Suit Filed	Date of Judgment	Judgment Amount/ Unpaid Balance
Section D	BANKRUPTCY FILINGS (Include information requested for any Chapter 7, 11, or 13 bankruptcy filings you have ever been a party to as an individual or as a business entity.)						
	I/J S/D	Type of Bankruptcy (Voluntary or Involuntary)/ Name and Address of Trustee	Bankruptcy Case Number	Bankruptcy Court of Jurisdiction	County and State of Discharge	Date Filed	Date of Discharge

Signature _____ Date _____

REQUEST FOR MONTHLY CASH FLOW STATEMENT FINANCIAL RECORDS

DEFENDANT'S FULL NAME

DOCKET NUMBER

All entries on the Cash Flow Statement must be accompanied by supporting documentation. Provide the probation officer with all records listed below are applicable to your financial statements, along with your completed Cash Flow Statement by the close of business _____.

MONTHLY CASH INFLOWS

Salary/Wages

- ◆ Copy of all W-2 forms submitted with the prior year income tax return.
Copy of all pay stubs for the most recent one-month period.

Cash Advances

- ◆ Copy of all pay stubs documenting cash advances.

Cash Bonuses

- ◆ Copy of all pay stubs documenting cash bonuses, and copy of related 1099 form.

Commissions

- ◆ Copy of all 1099 forms submitted with the prior year income tax return.

Business Income

- ◆ Copy of the past six monthly financial statements of all businesses owned or controlled by the defendant. Also, be sure to provide all financial information requested in the "Assets" portion of the "Net Worth Statement" under "Section K, Business Holdings."

Interest/Dividends

- ◆ Copy of most recent earnings statement from a financial institution (e.g., bank, brokerage firm, etc.). Copy of all 1099-INT forms, reporting annual interest earnings, for the past year.

Rental Income

- ◆ Copy of lease rental agreement, copy of monthly rental check received, and copy of the deposit on the defendant's monthly bank statement.

Trust Income

- ◆ Copy of the monthly trust income check, copy of the trust agreement, and a copy of the trust income tax return for the prior year.

Alimony/Child Support

- ◆ Copy of divorce decree, copy of payments received, and statements documenting child support/alimony obligations with payment history.

Social Security

- ◆ Copy of most recent Social Security check and most recent benefits determination letter.

Other Government Benefits

- ◆ Copy of most recent government subsidy check (e.g., unemployment compensation, food stamps) or online payment and most recent benefits determination letter.

Pensions/Annuities

- ◆ Copy of pension/annuity check, copy of most recent pension plan activity statement or annuity statement, and copy of pension plan or annuity contract.

Allowances (housing, auto, travel)

- ◆ Copy of related pay stub, 1099 form for prior year, and possibly a letter from the employer on company letterhead.

Gratuities/Tips

- ◆ Copy of current month's pay stubs, letter from employer estimating monthly gratuities earned, and W-2 form for the prior year.

Spouse (Significant Other's) Salary/Wages

- ◆ Copy of all W-2 forms submitted with the prior year income tax return.
Copy of all pay stubs for the most recent one-month period.

Other Joint Spousal Income

- ◆ Documentation verifying any monthly income jointly earned with the spouse or significant other, (e.g., income from the spouse or significant other or income from a business owned or controlled by the spouse or significant other, that the offender has a joint ownership interest in, or controls).

Income of Others in the Home

- ◆ Verification of the monthly earnings of all others living in the offender's household (e.g., all pay stubs for the prior month, W-2 forms, and 1099 forms for the prior year), paid receipts or canceled checks for necessary monthly household expenditures (e.g., for food, room rental, telephone, transportation, etc.) actually paid by this person on behalf of the offender.

Gifts From Family

- ◆ A signed and dated statement from the family member who gave gifts to the offender during the month, listing the amounts, dates and reasons given, and a copy of the check received, if any.

Gifts From Others

- ◆ A signed and dated statement from the person(s) who gave gifts to the offender during the month, listing the amounts, dates and reasons given, and a copy of the check received, if any. Gifts over a certain amount require tax forms declaring the income.

Loans From Your Business

- ◆ Copy of the past six monthly financial statements of all businesses owned or controlled by the offender that loaned money to the offender, including a detailed schedule of the "Loans To Shareholder/Owner" or "Due From Shareholder/Owner" general ledger accounts.

Mortgage Loans

- ◆ Copy of all mortgage checks received during the prior month, 1099 forms submitted with the prior year tax return, and copy of the sales agreement and escrow statement for all mortgage loans owed to the offender.

Other Loans

- ◆ Copy of loan documentation and copy of all loan checks received during the prior month.

Other (specify)

- ◆ Documentation verifying the source of all other monthly cash inflows (not yet disclosed or reported in these financial statements) and copy of all related monthly checks received.

Last Name	First Name	Middle Name	Social Security Number

Instructions for Completing Monthly Cash Flow Statement

Having been convicted in the United States District Court, you are required to prepare and file with the probation officer a statement fully describing your financial resources, including a complete listing of all monthly cash inflows and outflows.

If you are placed on probation or supervised release (or other types of supervision), you may be periodically required to provide updated information fully describing your financial resources and those of your spouse, significant others, or dependents, as described above, to keep a probation officer informed concerning compliance with any condition of supervision, including the payment of any criminal monetary penalties imposed by the court (see 18 U.S.C. § 3603).

Amendments were made to 18 U.S.C. §§ 3663 (a)(1)(B)(i), 3664(d)(3), and 3664(f)(2), and Rule 32(b)(4)(F) to clarify that the assets owned, jointly owned, or controlled by a defendant; liabilities, and the financial needs and earning ability of a defendant and a defendant's dependents are all relevant to the court's decision regarding a defendant's ability to pay. Your Cash Flow Statement should include assets or debts that are yours alone (I-Individual), assets or debts that are jointly (J-Joint) held by you and a spouse or significant other, assets or debts that are held by a spouse or significant other (S-Spouse or Significant Other) that you enjoy the benefits of or make occasional contributions toward, and assets or debts that are held by a dependent (D-Dependent) living in your home that you enjoy the benefits of or make occasional contributions toward.

Please complete the Monthly Cash Flow Statement in its entirety. You must answer "None" to any item that is not applicable to your financial condition. Attach additional pages if you need more space for any item. All entries must be accompanied by supporting documentation (see Request for Cash Flow Statement Financial Records (Prob. 48C)). Initial and date each page (including any attached pages) and sign and date the last page of the Cash Flow Statement.

Last Name - _____

MONTHLY CASH FLOW STATEMENT

Monthly Cash Inflows

Defendant	Gross	Net
Your Salary/Wages (List both monthly gross earnings and take-home pay after payroll deductions.)		
Your Cash Advances (List all payroll advances or other advances from work.)		
Your Cash Bonuses (List all payments from work in addition to your salary that are not an advance.)		
Commissions (List all non-employee earnings as an independent contractor.)		
Business Income (List both monthly gross income and net income after deducting expenses.)		
Interest (List all interest earned each month.)		
Dividends (List all dividends earned each month.)		
Rental Income (List all monthly income received from real estate properties owned.)		
Trust Income (List all trust income earned each month.)		
Alimony/Child Support (List all alimony or child support payments received each month.)		
Social Security (List all payments received from Social Security.)		
Other Government Benefits (List all amounts received from the government not yet reported (e.g., Aid to Families with Dependent Children).)		
Pensions/Annuities (List all funds received from pensions and annuities each month.)		
Allowances-Housing/Auto/Travel (List all funds received from housing allowances, auto allowances, travel allowances, and any other kind of allowance.)		
Gratuities/Tips (List all gratuities and tips received each month from any and all sources.)		
Spouse/Significant Other Salary/Wages (List all gross and net monthly salary and wages received by your spouse or significant other.)		
Other Joint Spousal Income (List any monthly income jointly earned with your spouse or significant other [e.g., any income from spouse or income from a business owned or operated by the spouse that you have a joint ownership interest in or control]).		
Income of Other In-House (List all monthly income of others living in the household or the monthly amount actually paid for household bills by these persons.)		
Gifts from Family (List all amounts received as gifts from family members each month.)		
Gifts from Others (List all gifts received from any sources not yet reported.)		
Loans from Your Business (List all loan amounts received each month from all businesses owned or controlled by you.)		
Mortgage Loans (List all amounts received each month from mortgage loans owed to you.)		
Other Loans (List all other loan amounts received each month not yet reported.)		
Other (specify) (List all other amounts received each month not yet reported.)		
TOTALS		

Last Name - _____

Necessary Monthly Cash Outflows

	Amount
Rent or Mortgage (List monthly rental payment or mortgage payment.)	
Groceries (List the total monthly amount paid for groceries and number of people in your household.) #	
Utilities (List the monthly amount paid for electric, heating oil/gas, water/sewer, telephone, and basic cable.)	
Electric	
Heating Oil/Gas	
Water/Sewer	
Telephone	
Basic Cable (no premium channels)	
Transportation (List monthly amount paid for gasoline, motor oil, necessary auto repairs, or the cost of public transportation.)	
Insurance (List the monthly amount paid for auto, health, homeowner/rental, and life insurance.)	
Auto	
Health	
Homeowner/Rental	
Life	
Clothing (List the monthly amount actually paid for clothing.)	
Loan Payments (List all monthly amounts paid toward verified loans, other than loans to family members, which are non-allowable expenses.)	
Credit Card Payments (List all monthly credit card or charge card payments.)	
Medical (List all monthly payments for necessary medical care or treatment.)	
Alimony/Child Support (List all alimony or child support payments made each month.)	
Co-payments (List the total monthly payments made for electronic monitoring and drug and mental health treatment.)	
Other (specify) (List all other necessary monthly amounts paid each month not yet reported.)	
Other Factors That May Affect Monthly Cash Flow (Describe)	
TOTAL	
NET MONTHLY CASH FLOW: \$ _____ (CASH INFLOWS LESS NECESSARY CASH OUTFLOWS)	
MONTHLY CRIMINAL MONETARY PENALTY PAYMENT: \$ _____	
PROSPECT OF INCREASE IN CASH INFLOWS (Give a general statement of the prospective increase of the value of any cash inflows reported.)	

Signature _____

Date _____

Last Name **First Name** **Middle Name**
SSN **SID**

Instructions for Completing Monthly Cash Flow Statement

Having been convicted in the United States District Court, you are required to prepare and file with the probation officer a statement fully describing your financial resources, including a complete listing of all monthly cash inflows and outflows.

If you are placed on probation or supervised release (or other types of supervision), you may be periodically required to provide updated information fully describing your financial resources and those of your spouse, significant others, or dependents, as described above, to keep a probation officer informed concerning compliance with any condition of supervision, including the payment of any criminal monetary penalties imposed by the court (see 18 U.S.C. § 3603).

Your Cash Flow Statement should include assets or debts that are yours alone (I-Individual), assets or debts that are jointly (J-Joint) held by you and a spouse or significant other, assets or debts that are held by a spouse or significant other (S-Spouse or Significant Other) that you enjoy the benefits of or make occasional contributions toward, and assets or debts that are held by a dependent (D-Dependent) living in your home that you enjoy the benefits of or make occasional contributions toward.

Please complete the Monthly Cash Flow Statement in its entirety. You must answer "None" to any item that is not applicable to your financial condition. Attach additional pages if you need more space for any item. All entries must be accompanied by supporting documentation (see Request for Cash Flow Statement Financial Records (Prob. 48C)). Initial and date each page (including any attached pages) and sign and date the last page of the Cash Flow Statement.

Monthly Cash Flow Statement

Monthly Cash Inflows

Defendant	Gross Net
Your Salary/Wages (List both monthly gross earnings and take-home pay after payroll deductions.)	
Your Cash Advances (List all payroll advances or other advances from work.)	
Your Cash Bonuses (List all payments from work in addition to your salary that are not an advance.)	
Commissions (List all non-employee earnings as an independent contractor.)	
Business Income (List both monthly gross income and net income after deducting expenses.)	
Interest (List all interest earned each month.)	
Dividends (List all dividends earned each month.)	
Rental Income (List all monthly income received from real estate properties owned.)	
Trust Income (List all trust income earned each month.)	
Alimony/Child Support (List all alimony or child support payments received each month.)	

Social Security (List all payments received from Social Security.)

Other Government Benefits (List all amounts received from the government not yet reported (e.g., Food stamps and unemployment compensation))

Pensions/Annuities (List all funds received from pensions and annuities each month.)

Allowances-Housing/Auto/Travel (List all funds received from housing allowances, auto allowances, travel allowances, and any other kind of allowance.)

Gratuities/Tips (List all gratuities and tips received each month from any and all sources.)

Spouse/Significant Other Salary/Wages (List all gross and net monthly salary and wages received by your spouse or significant other.)

Other Joint Spousal Income (List any monthly income jointly earned with your spouse or significant other [e.g., any income from spouse or income from a business owned or operated by the spouse that you have a joint ownership interest in or control]).

Income of Other In-House (List all monthly income of others living in the household or the monthly amount actually paid for household bills by these persons.)

Gifts from Family (List all amounts received as gifts from family members each month.)

Gifts from Others (List all gifts received from any sources not yet reported.)

Loans from Your Business (List all loan amounts received each month from all businesses owned or controlled by you.)

Mortgage Loans (List all amounts received each month from mortgage loans owed to you.)

Other Loans (List all other loan amounts received each month not yet reported.)

Other (specify) (List all other amounts received each month not yet reported.)

Totals

Necessary Monthly Cash Outflows

Rent or Mortgage (List monthly rental payment or mortgage payment.)

Groceries (List the total monthly amount paid for groceries and number of people in your household.)

Utilities (List the monthly amount paid for electric, heating oil/gas, water/sewer, telephone, and basic cable.)

Electric

Heating Oil/Gas

Water/Sewer

Telephone/Internet

Cable

Public Transportation (List monthly amount paid for public transportation.)

Car Payments (List all payments made to purchase or lease vehicles.)

Commuting Expenses (List monthly amount paid for gasoline, tolls etc.)

Auto Insurance (List the monthly amount paid for auto, health, homeowner/rental, and life insurance.)

Health Insurance (List the monthly amount paid for homeowner/rental.)

Homeowner/Rental Insurance (List the monthly amount paid for homeowner/rental insurance.)

Clothing (List the monthly amount actually paid for clothing.)

Loan Payments (List all monthly amounts paid toward verified loans, other than loans to family members, which are non-allowable expenses.)

Credit Card Payments (List all minimum monthly credit card or charge card payments.)

Medical (List all expenses not covered by insurance.)

Alimony/Child Support (List all alimony or child support payments made each month.)

Criminal Monetary Penalty (List all monthly payments for court-ordered criminal monetary penalties.)

Court-ordered Costs (List the total monthly payments made for location monitoring and drug and mental health treatment.)

Other (specify) (List all other necessary monthly amounts paid each month not yet reported.)

Other Factors That May Affect Monthly Cash Flow (Describe)

TOTAL

NET MONTHLY CASH FLOW: \$ (CASH INFLOWS LESS NECESSARY CASH OUTFLOWS)

Monthly Criminal Monetary Penalty Payment: \$

PROSPECT OF INCREASE IN CASH INFLOWS (Give a general statement of the prospective increase of

the value of any cash inflows reported.)

Signature

Date

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 for claims of restitution, to make a claim for
18 restitution, the victim shall submit information by affidavit or declaration and, as
19 applicable, documentary evidence. The information submitted must describe the items
20 or elements of loss, itemize the total dollar amounts of restitution claimed, and present
21 facts and evidence sufficient to support a finding the restitution is directly related to the
22 offense and the amount awarded. The prosecutor shall serve the defendant with a
23 copy of the information submitted by the victim no later than sixty days following
24 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 shall order restitution be paid to the division of
10 adult services for any benefits the division has paid or may pay under chapter 54-23.4
11 unless the court, on the record, directs otherwise. Any payments made pursuant to the
12 order must be deducted from damages awarded in a civil action arising from the same
13 incident.

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

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

1 compensation of additional necessary personnel. The state's attorneys and
2 county-employed clerks of district court shall remit the funds collected as costs under
3 this subsection to the county treasurer to be deposited in the county general fund.

4 ~~3-7.~~ The court may order the defendant to perform reasonable assigned work as a
5 condition of probation, which assigned work need not be related to the offense
6 charged, but must not be solely for the benefit of a private individual other than the
7 victim.

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

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

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

26 ~~b-c.~~ A defendant who is required to reimburse indigent defense costs and expenses
27 as a condition of probation and who is not willfully in default in that
28 reimbursement may at any time petition the court that imposed the condition to
29 waive reimbursement of all or any portion of the costs and expenses. If the court
30 is satisfied that reimbursement of the amount due will impose undue hardship on
31 the defendant or the defendant's immediate family, the court may waive

1 reimbursement of all or any portion of the amount due or modify the method of
2 payment.

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

7 5-9. If the court finds that the defendant is unable to pay a fine, supervision fee,
8 reimbursement for indigent defense costs and expenses, or restitution or reparations,
9 the court may order the defendant to perform reasonable assigned work in lieu of all or
10 part of a fine, a supervision fee, reimbursement for indigent defense costs and
11 expenses, or restitution or reparations. The defendant may not perform reasonable
12 assigned work in lieu of restitution or reparations unless the person entitled to
13 restitution or reparations has consented in writing or on the record.

House Bill 1041
Senate Judiciary Committee
Testimony Presented by Sara Behrens
March 14, 2023

Good morning Chair Larson, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today in support of House Bill 1041.

Currently, section 12.1-32-08 requires a hearing be held regarding restitution in all cases. Case law has held that the only exception is when the parties enter into a plea agreement wherein the defendant specifically agrees to payment of restitution. No timeline is provided regarding the restitution process.

HB 1041 provides a procedure and timeline for requesting restitution and objecting to a restitution request. The State must collect restitution information from the victim and provide a copy to the defendant within 60 days after the sentencing. Rather than a required hearing, the defendant can request a hearing within 30 days of receiving the restitution information from the State if the defendant disagrees with the restitution being requested. If a hearing is not requested within the 30 days, the court may enter restitution. Following the 30 days, the defendant may no longer challenge the restitution amount.

Restitution can include damages directly related to the offense and expenses actually sustained as a direct result of the criminal action. The cost of physical, psychiatric and psychological care can also be included if found to be necessary and related. Currently, the statute does not indicate what must be submitted in support of the restitution amount. HB 1041 delineates what type of

evidence must be provided to support the award. We hope that this will make the process go more smoothly and clarify what can be awarded.

Testimony was provided in the House by a victim who is dissatisfied with the payment plan set for the defendant in his case. He indicated that the defendant makes \$93,000 a year but only pays \$200 per month on the restitution judgment. This is not a typical situation. His suggestion was to use the federal restitution procedure which includes an extensive worksheet regarding the income and assets of the defendant. We do not think it would be appropriate to require such disclosures in every case. In setting the amount of restitution, the defendant's income and assets cannot be considered. Under Marsy's Law, the victim is entitled to full restitution regardless of the defendant's ability to pay. While we cannot require financial disclosures for setting restitution, there may be certain cases, such as that brought up in the House, where it may be appropriate to review the income and assets to set an appropriate payment plan. An amendment was made allowing the court to order disclosure of income and assets if appropriate to set a payment plan. We envision a form similar to the indigent defense application.

Much of the language in HB 1041 is already existing language that has been moved around and reworked. We hope that this will make the restitution process more easily understood, more workable, and save resources by not requiring a hearing when the amount is not challenged.

Thank you for your consideration and we urge a do pass.

Bill

If restitution is ordered criminally or civilly, the collection amount and procedure will be determined through use of forms PROB 48A and PROB 48C (net worth statement and cash flow statement)

*Example of punishment: Upon failure to pay the calculated restitution amount, consequences shall result in immediate revocation and class C felony plus assessments of additional fees of perhaps 10%.

Synopsis

Hello my name is, Joshua Olson, I live in Mandan and own an alcohol and drug treatment center in Bismarck which was embezzled from over the course of 5 years in the amount of 258,000 criminally and 554,000 civilly. After a very long time of court proceedings, charges were pressed, plea bargains were made, a deferred imposition and probation was sentenced and restitution was ordered.

Three years later, probation was revoked because there was a willful failure to pay that restitution. It was determined that he was making \$93,000 per year and only paying \$200 every month and a half.

During that revocation, the reason why such a small amount was paid is because there is no state statute providing a guideline for restitution payments.

After the revocation hearing, restitution was ordered again and the criminal was ordered to participate in the restitution program through DOCR.

See attached

Currently, the restitution program that was ordered is not being followed by parole and probation. Any monies collected are collected by garnishment through a collections agency that I hired and is no where near close to being collected in my lifetime.

PROPOSED AMENDMENT TO HOUSE BILL NO. 1041

Page 2, line 17, after “jurisdiction” insert “after the sentencing hearing”

Page 2, line 19, after “evidence” insert “within the time specified in the order”

Page 3, line 9, after “subsection.” insert “The court may order disclosure the defendant to disclose income and assets on forms developed by the state court administrator to facilitate the setting of an appropriate payment plan.”

Page 3, line 10, after “pay” insert “to the victim”