

September 2002

Introduced by

1 A BILL for an Act to amend and reenact subdivision p of subsection 4 of section 12.1-32-07 and
2 section 12.1-32-08 of the North Dakota Century Code, relating to the collection of restitution for
3 insufficient funds checks; and to provide for a continuing appropriation.

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

5 **SECTION 1. AMENDMENT.** Subdivision p of subsection 4 of section 12.1-32-07 of the
6 North Dakota Century Code is amended and reenacted as follows:

7 p. Reimburse the costs and expenses determined necessary for the defendant's
8 adequate defense when counsel is appointed for the defendant. When
9 reimbursement of indigent defense costs and expenses is imposed as a
10 condition of probation, the court shall proceed as provided in subsection ~~3~~ 4
11 of section 12.1-32-08.

12 **SECTION 2. AMENDMENT.** Section 12.1-32-08 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of**
15 **indigent defense costs and expenses - Conditions - Collection of restitution for**
16 **insufficient funds checks - Continuing appropriation.**

17 1. Before imposing restitution or reparation as a sentence or condition of probation,
18 the court shall hold a hearing on the matter with notice to the prosecuting attorney
19 and to the defendant as to the nature and amount thereof. The court, when
20 sentencing a person adjudged guilty of criminal activities that have resulted in
21 pecuniary damages, in addition to any other sentence it may impose, shall order
22 that the defendant make restitution to the victim or other recipient as determined by
23 the court, unless the court states on the record, based upon the criteria in this

subsection, the reason it does not order restitution or orders only partial restitution.

In determining whether to order restitution, the court shall take into account:

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

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

2. When the restitution ordered by the court under subsection 1 is the result of a finding that the defendant issued a check or draft without sufficient funds or without an account, the court shall impose as costs an amount equal to twenty-five percent

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

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

- ~~3.~~ 4. a. Under section 12.1-32-07, the court may order that the defendant reimburse indigent defense costs and expenses as a condition of probation. The court shall notify the defendant, the defendant's probation officer, and the prosecuting attorney of the amount of costs and expenses to be reimbursed and of the defendant's right to a hearing on the reimbursement amount. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of seventy-five dollars per hour for appointed counsel services plus reasonable expenses. The reimbursement amount must include an application fee imposed under section 29-07-01.1 if the fee has not been paid before disposition of the case and the court has not waived payment of the fee. If the defendant requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the basis for the amount to be reimbursed must be demonstrated. In determining the amount and method of reimbursement, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.
- b. A defendant who is required to reimburse indigent defense costs and expenses as a condition of probation and who is not willfully in default in that

1 reimbursement may at any time petition the court that imposed the condition
2 to waive reimbursement of all or any portion of the costs and expenses. If the
3 court is satisfied that reimbursement of the amount due will impose undue
4 hardship on the defendant or the defendant's immediate family, the court may
5 waive reimbursement of all or any portion of the amount due or modify the
6 method of payment.

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

11 ~~4.~~ 5. If the court finds that the defendant is unable to pay a fine, supervision fee,
12 reimbursement for indigent defense costs and expenses, or restitution or
13 reparations, the court may order the defendant to perform reasonable assigned
14 work in lieu of all or part of a fine, a supervision fee, reimbursement for indigent
15 defense costs and expenses, or restitution or reparations. The defendant may not
16 perform reasonable assigned work in lieu of restitution or reparations unless the
17 person entitled to restitution or reparations has consented in writing or on the
18 record.