

SENATE BILL NO. 2081

Introduced by

Judiciary Committee

(At the request of the Supreme Court)

1 A BILL for an Act to amend and reenact subdivision a of subsection 3 of section 12.1-32-08 and
2 section 29-07-01.1 of the North Dakota Century Code, relating to application fees for indigent
3 defense services, reimbursement of indigent defense costs and expenses, and creation of an
4 indigent defense administration fund; and to provide for a continuing appropriation.

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

6 **SECTION 1. AMENDMENT.** Subdivision a of subsection 3 of section 12.1-32-08 of the
7 North Dakota Century Code is amended and reenacted as follows:

8 3. a. Under section 12.1-32-07, the court may order that the defendant reimburse
9 indigent defense costs and expenses as a condition of probation. The court
10 shall notify the defendant, the defendant's probation officer, and the
11 prosecuting attorney of the amount of costs and expenses to be reimbursed
12 and of the defendant's right to a hearing on the reimbursement amount. It is a
13 rebuttable presumption that reasonable reimbursement of costs and expenses
14 consists of seventy-five dollars per hour for appointed counsel services plus
15 reasonable expenses. The reimbursement amount must include the
16 application fee imposed under section 29-07-01.1 if the fee has not been paid
17 before disposition of the case and the court has not waived payment of the
18 fee. If the defendant requests a hearing within thirty days of receiving notice
19 under this subdivision, the court shall schedule a hearing at which the basis
20 for the amount to be reimbursed must be demonstrated. In determining the
21 amount and method of reimbursement, the court shall consider the financial
22 resources of the defendant and the nature of the burden that reimbursement
23 of costs and expenses will impose.

1 **SECTION 2. AMENDMENT.** Section 29-07-01.1 of the 1999 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **29-07-01.1. Payment of expenses for defense of indigents - Reimbursement of**
4 **indigent defense costs and expenses - Indigent defense administration fund -**
5 **Continuing appropriation.**

- 6 1. Lawyers appointed to represent ~~needy~~ indigent persons must be compensated at a
7 reasonable rate to be determined by the court. Expenses necessary for the
8 adequate defense of ~~a needy~~ an indigent person, when approved by the judge,
9 must be paid by the state if the action is prosecuted in district court and by the city
10 in which the alleged offense took place if the action is prosecuted in municipal
11 court. The city shall also pay the expenses in any appeal taken to district court
12 from a judgment of conviction in municipal court pursuant to section 40-18-19. A
13 defendant requesting representation by appointed counsel, or for whom appointed
14 counsel without a request is considered appropriate by the court, shall submit an
15 application for appointed defense services. A nonrefundable application fee of
16 twenty-five dollars must be paid at the time the application is submitted. The court
17 may extend the time for payment of the fee or may waive or reduce the fee if the
18 court determines the defendant is financially unable to pay all or part of the fee. If
19 the application fee is not paid before disposition of the case, the fee amount must
20 be added to the amount to be reimbursed under this section. Application fees
21 collected under this subsection must be forwarded for deposit in the indigent
22 defense administration fund established under subsection 4.
- 23 2. A defendant with appointed counsel, subject to this subsection, shall reimburse the
24 state or city such sums as the state or city expends on the defendant's behalf.
- 25 a. At the time counsel is appointed for a defendant, the appointing court shall
26 advise the defendant of the defendant's potential obligation to reimburse the
27 appropriate governmental entity the amounts expended on behalf of the
28 defendant.
- 29 b. Within ninety days after its judgment of conviction or after conclusion of an
30 appeal of its initial judgment of conviction, the court that appointed counsel for
31 the defendant shall notify the defendant and the prosecuting attorney of the

1 amount of indigent defense costs and expenses the defendant is obligated to
2 reimburse if able to do so and of the defendant's right to a hearing on the
3 reimbursement amount. It is a rebuttable presumption that reasonable
4 reimbursement of costs and expenses consists of seventy-five dollars per
5 hour for appointed counsel services plus reasonable expenses. If the
6 defendant requests a hearing within thirty days of receiving notice under this
7 subdivision, the court shall schedule a hearing at which the basis for the
8 amount to be reimbursed must be demonstrated. In determining the amount
9 of reimbursement and method of payment, the court shall consider the
10 financial resources of the defendant and the nature of the burden that
11 reimbursement of costs and expenses will impose.

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

19 3. The state's attorney of the county or prosecuting attorney of the city in which the
20 alleged offense took place, if reimbursement has not been received, shall seek civil
21 recovery of any amounts expended on the defendant's behalf any time the state's
22 attorney or city attorney determines the person for whom counsel was appointed
23 may have funds to repay the state or city within six years of the date such amount
24 was paid on that person's behalf. A person against whom civil recovery is sought
25 under this subsection is entitled to all exemptions accorded to other judgment
26 debtors. The state's attorney may contract with a private sector collection agency
27 for assistance in seeking recovery of such funds. Before referring the matter to a
28 collection agency, the state's attorney shall notify the person who is the subject of
29 the collection action.

30 4. The indigent defense administration fund is a special fund in the state treasury.
31 The state treasurer shall deposit in the fund all application fees collected under

1 subsection 1. All moneys in the indigent defense administration fund are
2 appropriated on a continuing basis to the judicial branch to be used in the
3 administration of the indigent defense system and the collection of indigent
4 defense costs and expenses required to be reimbursed under this section.