

Sixty- second
Legislative Assembly
of North Dakota

Draft
House Bill No. _____

Introduced by

1 A BILL for an Act to amend and reenact sections 25-03.3-09 and 54-61-02 of the North Dakota
2 Century Code, relating to legal counsel in cases involving the commitment of sexually dangerous
3 individuals.

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

5 SECTION 1. AMENDMENT. Section 25-03.3-09 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **25-03.3-09. Right to Counsel - Waiver.**

- 8 1. Every respondent is entitled to legal counsel. Unless an appearance has been
9 entered on behalf of the respondent, the court, within twenty-four hours from the
10 time the petition was filed, exclusive of weekends or holidays, shall appoint
11 counsel to represent the respondent. If a respondent retains counsel, the retained
12 counsel immediately shall notify the court of that fact.
- 13 2. After consultation with counsel, the respondent may waive the right to counsel or
14 the right to any hearing provided pursuant to this chapter by notifying the court in
15 writing. The notification must clearly state the respondent's reasons for the
16 waiver and respondent's counsel shall separately certify that counsel has
17 explained to the respondent the proceedings, the legal and factual issues, potential
18 defenses, the burden of proof, and possible outcomes of the proceedings. No

1 guardian, guardian ad litem, attorney, or other individual may waive the right to
2 counsel on behalf of an individual with mental retardation.

3 3. If the court determines that the respondent is indigent, the court shall appoint
4 ~~counsel and order that appointed counsel be compensated by the county that is the~~
5 ~~respondent's place of residence in a reasonable amount based upon time and~~
6 ~~expenses provided by the commission on legal counsel for indigents.~~

7 4. ~~The state's attorney of a county that has expended sums pursuant to subsection 3~~
8 ~~may seek civil recovery of those sums from property of the respondent.~~

9 ~~Commencement of the action must occur within six years after the date the sums~~
10 ~~were paid. After notice and hearing, the court may order an individual to~~
11 ~~reimburse the county for expenditures made on that individual's behalf pursuant~~
12 ~~to this chapter.~~

13 (a). Unless it finds that there is no likelihood that the respondent is or will be
14 able to pay attorney fees and expenses, the court, in its judgment or any
15 order following any proceeding under this chapter, shall order the
16 respondent to reimburse the presumed amount of indigent defense costs
17 and expenses, as determined by the commission on legal counsel for
18 indigents, and shall notify the respondent of the right to a hearing on the
19 reimbursement amount.

20 (b). If the petitioner or respondent requests a hearing within thirty days of
21 receiving notice under this subdivision, the court shall schedule a hearing
22 at which the actual amount of attorney fees and expenses must be shown.

23 (c). In determining the amount of reimbursement and method of payment, the

1 court shall consider the financial resources of the respondent and the
2 nature of the burden that reimbursement of costs and expenses will
3 impose.

4 (d). A respondent who is required to reimburse indigent defense costs and
5 expenses and who is not willfully in default in that reimbursement may at
6 any time petition the court to waive reimbursement of all or any portion of
7 the attorney fees and expenses. If the court is satisfied that reimbursement
8 of the amount due will impose undue hardship on the respondent or the
9 respondent's immediate family, the court may waive reimbursement of all
10 or any portion of the amount due or modify the method of payment.

11 (e) If reimbursement has not been received, the attorney general shall seek
12 civil recovery of any amounts expended on the respondent's behalf
13 anytime the attorney general determines the respondent may have funds to
14 repay the state within six years of the date such amount was paid on the
15 respondent's behalf. A person against whom civil recovery is sought
16 under this subsection is entitled to all exemptions accorded to other
17 judgment debtors. The attorney general may contract with a private sector
18 collection agency for assistance in seeking recovery of such funds. Before
19 referring the matter to a collection agency, the state's attorney shall notify
20 the person who is the subject of the collection action.

21 **SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general
22 fund in the state treasury, not otherwise appropriated, the sum of **\$814,293** to the
23 commission on legal counsel for indigents for the purposes of defraying the

1 expenses of the commission on legal counsel for indigents in providing appointed
2 counsel services in cases involving the commitment of sexually dangerous
3 individuals under Chapter 25-03.3 of the North Dakota Century Code, for the
4 biennium beginning July 1, 2011, and ending June 30, 2013.

**Commission on Legal Counsel for Indigents
Fiscal Note - SDI Program (Sexually Dangerous Individual)**

1) ATTORNEY COSTS

(Assuming 20 new filing year one, 30 new filings, year 2)

Year I

20 New Filings at 65 hours x \$75.00/hour \$97,500.00

50 Annual Reviews at 25 hours x \$75.00/hr. \$93,750.00

Year II

30 New Filings at 65 hours x \$75.00/hour \$146,250.00

55 Annual Reveiws at 25 hours x \$75.00/hr. \$103,125.00

Appeals to Supreme Court * \$150,000.00

(40 hours x \$75.00/hour)

50 Filings for Biennium

TOTAL ATTORNEY FEES FOR BIENNIUM \$590,625.00

2) ADMINISTRATIVE COSTS (FOR BIENNIUM)

Administrative Officer II \$127,568.00

Office Costs (postage, travel, supplies, set up costs, IT) \$14,600.00

TOTAL ADMINISTRATIVE COSTS \$142,168.00

3) TRAINING & TRAVEL FOR ATTORNEY

4 Trainings x \$5,000.00 each \$20,000.00

Attorney Travel for Biennium \$61,500.00

(205 cases x \$300/ case)

(205 cases= 50 Appeals, 105 Annual Reviews, 50 New)

TOTAL TRAINING/TRAVEL FOR ATTORNEY \$81,500.00

1) **ATTORNEY FEES** \$590,625.00

2) **ADMINISTRATIVE COSTS** \$142,168.00

3) **TRAVEL/TRAINING FOR ATTORNEY** \$81,500.00

GRAND TOTAL COST \$814,293

* In 2007 there were 4 appeals, in 2008 10 appeals, 2009 12 appeals and to date (September 9, 2010), there have been 14 filed.