

Sixty-ninth
Legislative Assembly
of North Dakota

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

- 1 4. The preliminary hearing must be conducted before the director of the department of
2 corrections and rehabilitation or other hearing officer authorized by the director. The
3 preliminary hearing must be conducted by a disinterested hearing officer not directly
4 involved in the supervision of the parolee or by the person bringing the allegation of a
5 parole violation.
- 6 5. If the hearing officer determines there is probable cause to find that the parolee has
7 violated any of the terms and conditions of parole established by the board or by the
8 department of corrections and rehabilitation, the board may redetermine the time
9 remaining in the period of parole to reflect any portion of the period during which the
10 parolee was not under supervision or not in the custody of law enforcement personnel
11 in the state.
- 12 6. If the hearing officer determines there is probable cause to find that the parolee has
13 violated any of the terms and conditions of parole established by the board or by the
14 department of corrections and rehabilitation, the parolee must be returned to the
15 physical custody of the department of corrections and rehabilitation, transferred to
16 another correctional facility or the state hospital, or released from actual custody
17 pursuant to such terms and conditions as may be established by the parole board or
18 the department of corrections and rehabilitation, pending a final revocation hearing
19 before the parole board. If the board determines at the final revocation hearing that the
20 parolee has violated any:
 - 21 a. Any of the terms and conditions of parole established by the board or by the
22 department of corrections and rehabilitation, ~~it~~the board may order that the
23 parolee be recommitted to the physical custody of the department of corrections
24 and rehabilitation to serve all or part of the remaining time of the sentence that
25 has not been served in custody.
 - 26 b. A technical violation of parole, as defined in section 12.1-01-04, the board may
27 order the parolee be recommitted to the physical custody of the department of
28 corrections and rehabilitation to serve fifteen days for a first violation, up to thirty
29 days for a second violation, up to ninety days for a third violation, and the full
30 remaining time of the sentence that has not been served in custody for a fourth
31 and subsequent violation.

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

- a. Written notice of the purpose of the hearing and the alleged violations.
- b. The opportunity to be heard in person and present witnesses and documentary evidence.
- c. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that confrontation would create a risk of harm to the witness.
- d. A written statement as to the reasons for the decision.

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

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

12.1-01-04. General definitions.

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

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

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

~~2-3.~~ "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act".

~~3-4.~~ "Actor" includes, where relevant, a person guilty of an omission.

~~4-5.~~ "Bodily injury" means any impairment of physical condition, including physical pain.

~~5-6.~~ "Court" means any of the following courts: the supreme court, a district court, and where relevant, a municipal court.

~~6-7.~~ "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that

will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or ~~CO₂~~CO₂ gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.

~~7.8.~~ "Destructive device" means any explosive, incendiary or poison gas bomb, grenade, mine, rocket, missile, or similar device.

~~8.9.~~ "Explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material, or any part thereof may cause an explosion.

~~9.10.~~ "Firearm" means any weapon that will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such weapon, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.

~~10.11.~~ "Force" means physical action.

~~11.12.~~ "Government" means:

- a. The government of this state or any political subdivision of this state;
- b. Any agency, subdivision, or department of the state or any political subdivision of the state, including the executive, legislative, and judicial branches;
- c. Any corporation or other entity established by law to carry on any governmental function; and
- d. Any commission, corporation, or agency established by statute, compact, or contract between or among governments for the execution of intergovernmental programs.

~~12.13.~~ "Governmental function" includes any activity that one or more public servants are legally authorized to undertake on behalf of government.

- 1 ~~13.14.~~ "Harm" means loss, disadvantage, or injury to the person affected, and includes loss,
2 disadvantage, or injury to any other person in whose welfare the person affected is
3 interested.
- 4 ~~14.15.~~ "Included offense" means an offense:
- 5 a. That is established by proof of the same or less than all the facts required to
6 establish commission of the offense charged;
- 7 b. That consists of criminal facilitation of or an attempt or solicitation to commit the
8 offense charged; or
- 9 c. That differed from the offense charged only in that it constitutes a less serious
10 harm or risk of harm to the same person, property, or public interest, or because
11 a lesser degree of culpability suffices to establish its commission.
- 12 ~~15.16.~~ "Includes" should be read as if the phrase "but is not limited to" were also set forth.
- 13 ~~16.17.~~ "Law enforcement officer" or "peace officer" means a public servant authorized by law
14 or by a government agency or branch to enforce the law and to conduct or engage in
15 investigations or prosecutions for violations of law.
- 16 ~~17.18.~~ "Local" means of or pertaining to any political subdivision of the state.
- 17 ~~18.19.~~ "Manifest injustice" means a specific finding by the court that the imposition of
18 sentence is unreasonably harsh or shocking to the conscience of a reasonable
19 individual, with due consideration of the totality of circumstances.
- 20 ~~19.20.~~ "Offense" means conduct for which a term of imprisonment or a fine is authorized by
21 statute after conviction.
- 22 ~~20.21.~~ "Official action" includes a decision, opinion, recommendation, vote, or other exercise
23 of discretion by any government agency.
- 24 ~~21.22.~~ "Official proceeding" means a proceeding heard or which may be heard before any
25 government agency or branch or public servant authorized to take evidence under
26 oath, including any referee, hearing examiner, commissioner, notary, or other person
27 taking testimony or a deposition in connection with any such proceeding.
- 28 ~~22.23.~~ "Omission" means a failure to act.
- 29 ~~23.24.~~ As used in this title and in sections outside this title which define offenses, "person"
30 includes, where relevant, a corporation, limited liability company, partnership,
31 unincorporated association, or other legal entity. When used to designate a party

1 whose property may be the subject of action constituting an offense, the word "person"
2 includes a government that may lawfully own property in this state.

3 ~~24.25.~~ "Political subdivision" as used in this title and in any statute outside this title which
4 defines an offense means a county, city, school district, township, and any other local
5 governmental entity created by law.

6 ~~25.26.~~ "Possesses" means an individual has:

- 7 a. Direct physical control of something on or around the individual's person; or
8 b. The power and intention to exercise control over something accessible to but not
9 on or around the individual's person.

10 ~~26.27.~~ "Public servant" as used in this title and in any statute outside this title which defines
11 an offense means any officer or employee of government, including law enforcement
12 officers, whether elected or appointed, and any person participating in the
13 performance of a governmental function. The term does not include witnesses.

14 ~~27.28.~~ "Responsivity factors" means characteristics of an individual which affect the
15 individual's ability to respond favorably or unfavorably to a treatment goal.

16 ~~29.~~ "Risk assessment" means ~~an initial phase with a secondary process approved by the~~
17 ~~department of health and human services for the evaluation of the likelihood a person~~
18 ~~that committed an offense will commit another similar offense~~ a validated, standardized
19 actuarial tool used to identify potential risk factors that increase the likelihood an
20 individual will reoffend and responsivity factors, when addressed, reduce the likelihood
21 an individual will reoffend. The initial phase is an assessment tool that is administered
22 by a trained ~~probation and parole officer~~ corrections professional. A predetermined
23 score on the initial phase initiates the secondary process, approved by the department
24 of health and human services, that ~~includes~~ may include a clinical interview,
25 psychological testing, and verification through collateral information or
26 psychophysiological testing, or both. The department of health and human services
27 shall perform the secondary process of the risk assessment.

28 ~~28.30.~~ "Serious bodily injury" means bodily injury that creates a substantial risk of death or
29 which causes serious permanent disfigurement, unconsciousness, extreme pain,
30 permanent loss or impairment of the function of any bodily member or organ, a bone
31 fracture, or impediment of air flow or blood flow to the brain or lungs.

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

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

- 18 b. "Dangerous weapon" means a weapon defined in ~~subsection 6 of section~~
19 12.1-01-04 or a weapon the possession of which under the circumstances
20 indicates an intent or readiness to inflict serious bodily injury.

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

23 **12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

- 24 1. When the court imposes probation upon conviction for a felony offense subject to
25 section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section
26 12.1-17-07.1, a second or subsequent violation of any domestic violence protection
27 order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony
28 offense under chapter 39-08, the court shall place the defendant under the supervision
29 and management of the department of corrections and rehabilitation. When the court
30 imposes probation upon conviction or order of disposition in all other felony cases, the
31 court may place the defendant under the supervision and management of the

department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court.

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

chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
- b. Day reporting;
- c. Curfew;
- d. Home confinement;
- e. House arrest;
- f. Electronic monitoring;
- g. Residential halfway house;
- h. Intensive supervision program;
- i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours;
- j. Participation in the twenty-four seven sobriety program; or
- k. One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.

4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate and may include any one or more of the following:

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

- 1 n. Submit the defendant's person, place of residence, or vehicle to search and
2 seizure by a probation officer at any time of the day or night, with or without a
3 search warrant.
- 4 o. Serve a term of imprisonment of up to one-half of the maximum term authorized
5 for the offense of which the defendant was convicted.
- 6 p. Reimburse the costs and expenses determined necessary for the defendant's
7 adequate defense when counsel is appointed or provided at public expense for
8 the defendant. When reimbursement of indigent defense costs and expenses is
9 imposed as a condition of probation, the court shall proceed as provided in
10 subsection 4 of section 12.1-32-08.
- 11 q. Provide community service for the number of hours designated by the court.
- 12 r. Refrain from any subscription to, access to, or use of the internet.
- 13 5. When the court imposes a sentence to probation, probation in conjunction with
14 imprisonment, or probation in conjunction with suspended execution or deferred
15 imposition of sentence, the defendant must be given a certificate explicitly setting forth
16 the conditions on which the defendant is being released.
- 17 6. When it is alleged a probationer has absconded from supervision, the department of
18 corrections and rehabilitation may issue an authority to hold until the probationer is
19 apprehended. The department may dismiss the authority to hold, implement
20 intermediate measures, or initiate a petition for revocation.
- 21 ~~6.7.~~ The court, upon notice to the probationer and with good cause, may modify or enlarge
22 the conditions of probation at any time before the expiration or termination of the
23 period for which the probation remains conditional. If the defendant violates a
24 condition of probation at any time before the expiration or termination of the period, the
25 court may continue the defendant on the existing probation, with or without modifying
26 or enlarging the conditions, or may revoke the probation and impose any other
27 sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of
28 initial sentencing or deferment.
- 29 ~~7.8.~~ The court may continue or modify probation conditions or revoke probation for a
30 violation of probation conditions occurring before the expiration or termination of the
31 period of probation notwithstanding that the order of the court is imposed after the

1 expiration or termination has occurred. The petition for revocation must be issued
2 within sixty days of the expiration or termination of probation.

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

7 a. Fifteen days for a first revocation;

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

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

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

12 ~~8.10.~~ Jurisdiction over a probationer may be transferred from the court that imposed the
13 sentence to another court of this state with the concurrence of both courts. Retransfers
14 of jurisdiction may also occur in the same manner. The court to which jurisdiction has
15 been transferred under this subsection may exercise all powers permissible under this
16 chapter over the defendant.

17 ~~9.11.~~ Notwithstanding any other provision of law, the court may authorize the defendant to
18 assist law enforcement officers in an investigation of a criminal offense upon the terms
19 and conditions as the court may require by written order. The court shall hold a
20 hearing in camera before issuing an order under this subsection. The order must be
21 sealed and is subject to inspection only upon order of the court.

22 ~~10.12.~~ The department of corrections and rehabilitation shall provide written notice to a
23 defendant who is in the department's physical custody of any untried petition for
24 revocation against the defendant of which the department has notice and of the
25 defendant's right to make a request for final disposition of the petition.

26 a. Upon notice of an untried petition for revocation of probation, the defendant may
27 request final disposition of the petition. The defendant's request must be in
28 writing and name the court in which the petition for revocation of probation is
29 pending and the prosecuting official charged with the duty of prosecuting the
30 petition.

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

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

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

24 **12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of**
25 **indigent defense costs and expenses - Conditions - Collection of restitution for**
26 **insufficient funds checks - Continuing appropriation.**

- 27 1. The court, when sentencing a person adjudged guilty of criminal activities that have
28 resulted in pecuniary damages, in addition to any other sentence the court may
29 impose, shall order that the defendant make restitution to the victim or other recipient
30 as determined by the court. Restitution must include payment to the owner of real
31 property that is contaminated by the defendant in the manufacturing of

1 methamphetamine for the cost of removing the contamination and returning the
2 property to the property's condition before contamination and to any other person that
3 has incurred costs in decontaminating the property.

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

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

17 4. In determining the amount of restitution, the court shall take into account the
18 reasonable damages sustained by the victim or victims of the criminal offense, which
19 damages are limited to those directly related to the criminal offense and expenses
20 actually sustained as a direct result of the defendant's criminal action. This can include
21 an amount equal to the cost of necessary and related professional services and
22 devices relating to physical, psychiatric, and psychological care. The defendant may
23 be required as part of the sentence imposed by the court to pay the prescribed
24 treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and
25 12.1-27.2. The court shall fix the amount of restitution or reparation and shall fix the
26 manner of performance of any condition or conditions of probation established
27 pursuant to this subsection. The court may order the defendant to disclose income and
28 assets on forms developed by the state court administrator to facilitate the setting of
29 an appropriate payment plan. The court shall order restitution be paid to the division of
30 adult services for any benefits the division has paid or may pay to the victim under
31 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.

5. An order that a defendant make restitution or reparation as a sentence or condition of probation, unless the court directs otherwise, may be filed without filing fee, 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. Upon thirty days' written notice to the victim's last known address, the court may order the judgment imposing a duty to pay restitution or reparation be docketed in the same manner as a civil judgment under section 29-26-22.1.

6. 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 the greater of the sum of ten dollars or an amount equal to twenty-five percent of the amount of restitution ordered. The costs imposed under this subsection, however, may not exceed one thousand dollars. 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.

7. 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.

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

a. ~~Unless it finds that there is no likelihood that the defendant is or will be able to pay attorney's fees and expenses, the court, in its judgment of conviction, and in~~

1 any order or amended judgment following a revocation or other postjudgment
2 proceeding, shall notify the defendant, the defendant's probation officer, and the
3 prosecuting attorney of the presumed amount of costs and expenses to be
4 reimbursed, as determined by the commission on legal counsel for indigents, and
5 of the right to a hearing on the reimbursement amount. The reimbursement
6 amount must include an application fee imposed under section 29-07-01.1 if the
7 fee has not been paid before disposition of the case and the court has not waived
8 payment of the fee.

9 b. ~~If the defendant or prosecutor requests a hearing within thirty days of receiving~~
10 ~~notice under this subdivision, the court shall schedule a hearing at which the~~
11 ~~actual amount of attorney's fees and expenses must be shown. In determining~~
12 ~~the amount and method of reimbursement, the court shall consider the financial~~
13 ~~resources of the defendant and the nature of the burden that reimbursement of~~
14 ~~costs and expenses will impose.~~

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

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

27 9. ~~If the court finds that the defendant is unable to pay a fine, supervision fee,~~
28 ~~reimbursement for indigent defense costs and expenses, or restitution or reparations,~~
29 ~~the court may order the defendant to perform reasonable assigned work in lieu of all or~~
30 ~~part of a fine, a supervision fee, reimbursement for indigent defense costs and~~
31 ~~expenses, or restitution or reparations. The defendant may not perform reasonable~~

assigned work in lieu of restitution or reparations unless the person entitled to restitution or reparations has consented in writing or on the record.

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

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

4. Lawyers provided to represent indigent persons must be compensated at a reasonable rate to be determined by the commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person prosecuted in district court, other than for a violation of a home rule county's ordinance, when approved by the commission, must be paid by the state. Expenses necessary for the adequate defense of an indigent person prosecuted for violation of a home rule county's ordinance must be paid by the home rule county. Expenses necessary for the adequate defense of an indigent person prosecuted in municipal court, when approved by the judge, must be paid by the city in which the alleged offense took place. The city shall also pay the expenses in any matter transferred to district court pursuant to section 40-18-06.2 or 40-18-15.1, in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19, and in an appeal or postconviction matter seeking relief from a conviction resulting from violation of a municipal ordinance. A defendant requesting representation by counsel at public expense, or for whom counsel provided at public expense without a request is considered appropriate by the court, shall submit an application for indigent defense services. For an application for indigent defense services in the district court, a nonrefundable application fee of thirty-five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the case, the fee amount must be added to the amount to be reimbursed under this section. Application fees collected under this subsection must be forwarded for deposit in the indigent defense administration fund established under subsection 4.

- 1 2. ~~A defendant for whom counsel is provided at public expense, subject to this~~
2 ~~subsection, shall reimburse the state, home rule county, or city such sums as the~~
3 ~~state, home rule county, or city expends on the defendant's behalf.~~
- 4 a. ~~At the time counsel is provided for a defendant, the court shall advise the~~
5 ~~defendant of the defendant's potential obligation to reimburse the appropriate~~
6 ~~governmental entity the amounts expended on behalf of the defendant.~~
- 7 b. ~~Unless it finds that there is no likelihood that the defendant is or will be able to~~
8 ~~pay attorney's fees and expenses, the court, in its judgment of conviction, and in~~
9 ~~any order or amended judgment entered following a revocation or other~~
10 ~~postjudgment proceeding, shall order the defendant to reimburse the presumed~~
11 ~~amount of indigent defense costs and expenses, as determined by the~~
12 ~~commission, and shall notify the defendant of the right to a hearing on the~~
13 ~~reimbursement amount. If the defendant or prosecutor requests a hearing within~~
14 ~~thirty days of receiving notice under this subdivision, the court shall schedule a~~
15 ~~hearing at which the actual amount of attorney's fees and expenses must be~~
16 ~~shown. In determining the amount of reimbursement and method of payment, the~~
17 ~~court shall consider the financial resources of the defendant and the nature of the~~
18 ~~burden that reimbursement of costs and expenses will impose.~~
- 19 c. ~~A defendant who is required to reimburse indigent defense costs and expenses~~
20 ~~and who is not willfully in default in that reimbursement may at any time petition~~
21 ~~the court to waive reimbursement of all or any portion of the attorney's fees and~~
22 ~~expenses. If the court is satisfied that reimbursement of the amount due will~~
23 ~~impose undue hardship on the defendant or the defendant's immediate family,~~
24 ~~the court may waive reimbursement of all or any portion of the amount due or~~
25 ~~modify the method of payment.~~
- 26 3. ~~The attorney general, the state's attorney of the home rule county, or the prosecuting~~
27 ~~attorney of the city in which the alleged offense took place, if reimbursement has not~~
28 ~~been received, shall seek civil recovery of any amounts expended on the defendant's~~
29 ~~behalf anytime the attorney general, state's attorney, or city attorney determines the~~
30 ~~person for whom counsel was appointed may have funds to repay the state, home rule~~
31 ~~county, or city within six years of the date such amount was paid on that person's~~

1 ~~behalf. A person against whom civil recovery is sought under this subsection is entitled~~
2 ~~to all exemptions accorded to other judgment debtors. The attorney general, state's~~
3 ~~attorney, or prosecuting attorney may contract with a private sector collection agency~~
4 ~~for assistance in seeking recovery of such funds. Before referring the matter to a~~
5 ~~collection agency, the state's attorney shall notify the person who is the subject of the~~
6 ~~collection action.~~

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

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