Sixty-fifth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2121

Introduced by

Judiciary Committee

(At the request of the Supreme Court)

A BILL for an Act to amend and reenact sections 12.1-32-08 and 29-26-22 of the North Dakota Century Code, relating to costs for insufficient funds checks and assessment of court fees; to repeal section 29-26-22.2 of the North Dakota Century Code, relating to compromise of judgments for court fees and costs by county commissioners; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Before imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount of restitution. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence the court may impose, shall order that the defendant make restitution to the victim or other recipient as determined by 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. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property. 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~~Subject to limitations in this subsection, 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 but which may not exceed one thousand dollars. ~~The~~If 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~~are imposed in a county in which the state's attorney or county-employed clerk of district court, or both, is responsible for enforcement and distribution of restitution and maintaining victim records, the costs must be added to restitution. The state's ~~attorneys~~attorney and county-employed ~~clerks of district court~~clerk shall remit the funds collected as costs ~~under this subsection~~ to the county treasurer to be deposited in the county general fund. If the costs are imposed in a county in which the state's attorney or county-employed clerk is not responsible for enforcement and distribution of restitution and maintaining victim records, the costs must be added to court fees imposed under section 29-26-22. The clerk of district court shall remit the funds collected as costs in accordance with subsection 2 of section 29-26-22.

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.

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. 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 any order or amended judgment following a revocation or other postjudgment proceeding, shall notify the defendant, the defendant's probation officer, and the prosecuting attorney of the presumed amount of costs and expenses to be reimbursed, as determined by the commission on legal counsel for indigents, and of the right to a hearing on the reimbursement amount. 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 or prosecutor requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the actual amount of attorney's fees and expenses must be shown. 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 reimbursement may at any time petition the court that imposed the condition to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

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

5. If the court finds that the defendant is unable to pay a fine, supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations, the court may order the defendant to perform reasonable assigned work in lieu of all or part of a fine, a supervision fee, reimbursement for indigent defense costs and 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 2. AMENDMENT. Section 29-26-22 of the North Dakota Century Code is amended and reenacted as follows:

29-26-22. Judgment for fines - Court ~~administration~~ fee - ~~Community service supervision fee~~<u>Disposition of fees</u> - Special funds - Docketing and enforcement.

1. In all criminal cases except infractions, upon a plea or finding of guilt, the court shall impose ~~a~~<u>the following</u> court ~~administration~~ fee in lieu of the assessment of court costs~~.~~

~~The court administration fee must include~~: a fee of ~~one~~two hundred ~~twenty-five~~fifty dollars for a class B misdemeanor, ~~two~~four hundred dollars for a class A misdemeanor, ~~four~~six hundred dollars for a class C felony, ~~six~~eight hundred ~~fifty~~ dollars for a class B felony, and ~~nine hundred~~one thousand dollars for a class A or AA felony.

2. ~~In addition, in all criminal cases except infractions, the court administration fee must include one hundred dollars. Of the additional one hundred dollar court administration fee, the first seven hundred fifty thousand dollars collected per biennium must be deposited in the indigent defense administration fund, which must be used for indigent defense services in this state, and the next four hundred sixty thousand dollars collected per biennium must be deposited in the court facilities improvement and maintenance fund. After the minimum thresholds have been collected, one-half of the additional court administration fee must be deposited in each fund~~A fee imposed under subsection 1 must be distributed in the following manner:

   a. Sixty-two and nine-tenths percent must be deposited in the state general fund.

   b. Twenty percent must be deposited in the indigent defense administration fund.

   c. Sixteen and six-tenths percent must be deposited in the court facilities improvement and maintenance fund.

   d. Five-tenths of one percent must be deposited in the community service supervision fund, which must be used to provide community service grants subject to legislative appropriation.

3. ~~In addition to any court administration fees that may be imposed under subsections 1 and 2, the court shall impose upon each defendant who receives a sentence that includes community service a community service supervision fee of twenty-five dollars. The community service supervision fee must be deposited in the community service supervision fund. The fees deposited in this fund must be used to provide community service supervision grants subject to legislative appropriations.~~

~~4.~~ A court may waive ~~the administration fee or community service supervision~~ fee required under subsection 1 upon a showing of indigency as provided in section 25-03.1-13. ~~District court administration fees, exclusive of amounts deposited in the indigent defense administration fund and the court facilities and improvement fund, and forfeitures must be deposited in the state general fund.~~ A judgment that the

defendant pay a fine or fees, or both, may be docketed and if docketed constitutes a lien upon the real estate of the defendant in like manner as a judgment for money rendered in a civil action. The court may allow the defendant to pay any assessed ~~administration~~ fee ~~or community service supervision fee~~ in installments. When a defendant is assessed ~~administration fees or a community service supervision~~a fee under subsection 1, the court may not impose at the same time an alternative sentence to be served if the fees are not paid.

SECTION 3. REPEAL. Section 29-26-22.2 of the North Dakota Century Code is repealed.

SECTION 4. EFFECTIVE DATE. This Act is effective for court fees imposed after June 30, 2017.