

SENATE BILL NO. 2220

Introduced by

Senator W. Stenehjem

1 A BILL for an Act to amend and reenact sections 12.1-32-07 and 12.1-32-08 of the North
2 Dakota Century Code, relating to supervision of probationers, restitution, and reimbursement of
3 indigent defense costs from offenders.

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

5 **SECTION 1. AMENDMENT.** Section 12.1-32-07 of the 1995 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

- 8 1. When the court imposes probation upon conviction for a felony, the court shall
9 place the defendant under the supervision and management of the department of
10 corrections and rehabilitation. In class A misdemeanor cases, the court may place
11 the defendant under the supervision and management of the department of
12 corrections and rehabilitation or other responsible party selected by the court. In
13 all other cases, the court may place the defendant under the supervision and
14 management of a responsible party other than the department of corrections and
15 rehabilitation selected and supervised by the court. The department of corrections
16 and rehabilitation may arrange for the supervision and management of the
17 defendant by a community corrections program selected by the department of
18 corrections and rehabilitation. A community corrections program means a program
19 for the supervision of a defendant, including monitoring and enforcement of terms
20 and conditions of probation set by the court or pursuant to a conditional release
21 from the physical custody of a correctional facility or the department of corrections
22 and rehabilitation.
- 23 2. The conditions of probation must be such as the court in its discretion deems
24 reasonably necessary to ensure that the defendant will lead a law-abiding life or to

1 assist the defendant to do so. The court shall provide as an explicit condition of
2 every probation that the defendant not commit another offense during the period
3 for which the probation remains subject to revocation. The court shall order
4 supervision costs and fees of not less than thirty dollars per month unless the court
5 makes a specific finding on record that the imposition of fees will result in an undue
6 hardship.

- 7 3. The court shall provide as an explicit condition of every probation that the
8 defendant may not possess a firearm, destructive device, or other dangerous
9 weapon while the defendant is on probation.

10 Unless waived on the record by the court, the court shall also provide as a
11 condition of probation that the defendant undergo various agreed-to community
12 constraints and conditions as intermediate measures of the department of
13 corrections and rehabilitation to avoid revocation, which may include:

- 14 a. Community service;
15 b. Day reporting;
16 c. Curfew;
17 d. Home confinement;
18 e. House arrest;
19 f. Electronic monitoring;
20 g. Residential halfway house; or
21 h. Intensive supervision program.

- 22 4. When imposing a sentence to probation, probation in conjunction with
23 imprisonment, or probation in conjunction with suspended execution or deferred
24 imposition of sentence, the court may impose such conditions as it deems
25 appropriate, and may include any one or more of the following:
26 a. Work faithfully at a suitable employment or faithfully pursue a course of study
27 or of vocational training that will equip the defendant for suitable employment.
28 b. Undergo available medical or psychiatric treatment and remain in a specified
29 institution if required for that purpose.
30 c. Attend or reside in a facility established for the instruction, recreation, or
31 residence of persons on probation.

- 1 d. Support the defendant's dependents and meet other family responsibilities.
- 2 e. Make restitution or reparation to the victim of the defendant's conduct for the
- 3 damage or injury which was sustained, or perform other reasonable assigned
- 4 work. When restitution, reparation, or assigned work is a condition of
- 5 probation, the court shall proceed as provided in subsection 1 or 2, as
- 6 applicable, of section 12.1-32-08.
- 7 f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05,
- 8 except when imposition of sentence is deferred.
- 9 g. Refrain from excessive use of alcohol, or any use of narcotics or of another
- 10 dangerous or abusable drug without a prescription.
- 11 h. Permit the probation officer to visit the defendant at reasonable times at the
- 12 defendant's home or elsewhere.
- 13 i. Remain within the jurisdiction of the court, unless granted permission to leave
- 14 by the court or the probation officer.
- 15 j. Answer all reasonable inquiries by the probation officer and promptly notify
- 16 the probation officer of any change in address or employment.
- 17 k. Report to a probation officer at reasonable times as directed by the court or
- 18 the probation officer.
- 19 l. Submit to a medical examination or other reasonable testing for the purpose
- 20 of determining the defendant's use of narcotics, marijuana, or other controlled
- 21 substance whenever required by a probation officer.
- 22 m. Refrain from associating with known users or traffickers in narcotics,
- 23 marijuana, or other controlled substances.
- 24 n. Submit the defendant's person, place of residence, or vehicle to search and
- 25 seizure by a probation officer at any time of the day or night, with or without a
- 26 search warrant.
- 27 o. Serve a term of imprisonment of up to one-half of the maximum term
- 28 authorized for the offense of which the defendant was convicted or one year,
- 29 whichever is less.
- 30 p. Reimburse the costs and expenses determined necessary for the defendant's
- 31 adequate defense when counsel is appointed for the defendant. When

1 reimbursement of indigent defense costs and expenses is imposed as a
2 condition of probation, the court shall proceed as provided in subsection 3 of
3 section 12.1-32-08.

4 q. Provide community service for the number of hours designated by the court.

5 5. When the court imposes a sentence to probation, probation in conjunction with
6 imprisonment, or probation in conjunction with suspended execution or deferred
7 imposition of sentence, the defendant must be given a certificate explicitly setting
8 forth the conditions on which the defendant is being released.

9 6. The court, upon notice to the probationer and with good cause, may modify or
10 enlarge the conditions of probation at any time prior to the expiration or termination
11 of the period for which the probation remains conditional. If the defendant violates
12 a condition of probation at any time before the expiration or termination of the
13 period, the court may continue the defendant on the existing probation, with or
14 without modifying or enlarging the conditions, or may revoke the probation and
15 impose any other sentence that was available under section 12.1-32-02 or
16 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended
17 execution of sentence, the court may revoke the probation and cause the
18 defendant to suffer the penalty of the sentence previously imposed upon the
19 defendant.

20 7. The court may continue or modify probation conditions or revoke probation for a
21 violation of probation conditions occurring before the expiration or termination of
22 the period of probation notwithstanding that the order of the court is imposed after
23 the expiration or termination has occurred. The petition for revocation must be
24 issued within sixty days of the expiration or termination of probation.

25 8. Jurisdiction over a probationer may be transferred from the court that imposed the
26 sentence to another court of this state, with the concurrence of both courts.
27 Retransfers of jurisdiction may also occur in the same manner. The court to which
28 jurisdiction has been transferred under this subsection may exercise all powers
29 permissible under this chapter over the defendant.

30 **SECTION 2. AMENDMENT.** Section 12.1-32-08 of the 1995 Supplement to the North
31 Dakota Century Code is amended and reenacted as follows:

1 **12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of**
2 **indigent defense costs and expenses - Conditions.**

3 1. Prior to imposing restitution or reparation as a sentence or condition of probation,
4 the court shall hold a hearing on the matter with notice to the prosecuting attorney
5 and to the defendant as to the nature and amount thereof. The court, when
6 sentencing a person adjudged guilty of criminal activities which have resulted in
7 pecuniary damages, in addition to any other sentence it may impose, shall order
8 that the defendant make restitution to the victim or other recipient as determined by
9 the court, unless the court states on the record, based upon the criteria in this
10 subsection, the reason it does not order restitution or orders only partial restitution.

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

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

26 The court shall fix the amount of restitution or reparation, which may not exceed an
27 amount the defendant can or will be able to pay, and shall fix the manner of
28 performance of any condition or conditions of probation established pursuant to
29 this subsection. The court may order restitution be paid to the division of parole
30 and probation for any benefits it has paid or may pay under chapter 54-23.4 unless
31 the court, on the record, directs otherwise. Any payments made pursuant to such

- 1 order must be deducted from damages awarded in a civil action arising from the
2 same incident. An order that a defendant make restitution or reparation as a
3 sentence or condition of probation ~~must~~ may, unless the court directs otherwise,
4 be filed, transcribed, and enforced by the person entitled to the restitution or
5 reparation in the same manner as civil judgments rendered by the courts of this
6 state may be enforced.
- 7 2. The court may order the defendant to perform reasonable assigned work as a
8 condition of probation, which assigned work need not be related to the offense
9 charged, but must not be solely for the benefit of a private individual other than the
10 victim.
- 11 3. a. Prior to imposing reimbursement of indigent defense costs and expenses as a
12 condition of probation, the court shall hold a hearing on the matter with notice
13 to the prosecuting attorney, the defendant, and the defendant's probation
14 officer concerning the nature and amount of costs and expenses to be
15 reimbursed. It is a rebuttable presumption that reasonable reimbursement of
16 costs and expenses consists of fifty dollars per hour for appointed counsel
17 services plus reasonable expenses. The court may not impose
18 reimbursement of indigent defense costs and expenses as a condition of
19 probation unless the court finds the defendant is or may be able to pay them.
20 In determining the amount and method of reimbursement, the court shall
21 consider the financial resources of the defendant and the nature of the burden
22 that reimbursement of costs and expenses will impose.
- 23 b. A defendant who is required to reimburse indigent defense costs and
24 expenses as a condition of probation and who is not willfully in default in that
25 reimbursement may at any time petition the court that imposed the condition
26 to waive reimbursement of all or any portion of the costs and expenses. If the
27 court is satisfied that reimbursement of the amount due will impose undue
28 hardship on the defendant or the defendant's immediate family, the court may
29 waive reimbursement of all or any portion of the amount due or modify the
30 method of payment.

- 1 c. If at any time the court finds that the defendant is able to reimburse costs and
2 expenses and has willfully failed to do so, the court may continue, modify, or
3 enlarge the conditions of probation or revoke probation as provided in
4 subsection 5 or 6, as applicable, of section 12.1-32-07.
- 5 d. If the court finds that the defendant is unable to pay a fine, supervision fee,
6 reimbursement for indigent defense costs and expenses, or restitution or
7 reparations, the court may order the defendant to perform reasonable
8 assigned work in lieu of all or of part of a fine, a supervision fee,
9 reimbursement for indigent defense costs and expenses, or restitution or
10 reparations. The defendant may not perform reasonable assigned work in
11 lieu of restitution or reparations unless the person entitled to restitution or
12 reparations has consented in writing or on the record.