

**2013 SENATE JUDICIARY**

**SB 2078**

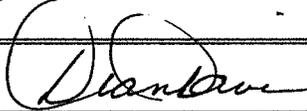
# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

SB2078  
1/15/2013  
Job #17201

Conference Committee

Committee Clerk Signature



**Minutes:**

*Attached testimony*

**Relating to costs for insufficient funds checks and assessment of court fees, relating to compromise of judgments for court fees and costs by county commissioners.**

**Senator David Hogue - Chairman**

Opens the hearing on SB2078

**Frank Racek** - District Judge from Fargo, ND. - Provides attachment

He explains that the court is trying to accomplish is a consolidation of a lot of the work done in criminal cases. He relates that in criminal cases in addition to whatever time a defendant is sentenced to jail, whatever conditions of probation are set a judge must decide what financial sanctions to impose on a defendant. He goes on to say they consist of three components, fines, restitution and then a series of court costs. He explains the costs they go through. He refers to the handout for the costs. He defines the seven different fees and what is required of the Judiciary. He said the court is proposing to consolidate the many the many different numbers down to a single cost that is set by the Legislature. He said the exact number set is not of particular significance to the issue. It could be a single number by grade of offense which what is proposed. This would be a substantial improvement in the way business is done now. He refers to attachment.

**Senator Grabinger** - Asks if the fees are charged on all the cases. If not then in setting a set fee you may be charging the defendant more than the current law.

**Racek** - Replies the goal is to reach the optimal point for everyone concerned. A lot of times decisions are made on the defendant's ability to pay. The present bill would allow to wave all or a given part of a given fee. As a practical matter it does not change the matter for their customers.

**Senator Armstrong** - States in his district judges treat one of the fees as un-wavable.

**Racek** - Replies that discretion is left to various judges on waving fees.

**Senator Hogue** - Asks for a history on how there got to be 7 funds.

**Racek** - Explains that over time some of the smaller funds were created from organizations with good intentions and good programs.

**Senator Hogue** - Asks if this bill builds in calculations based on the historical allocations or would have to be done.

**Racek** - Replies that page six of the bill has the percentages but it needs to be amended because they have updated numbers now. Their intent is not to apply it to different funds but easier to collect and distribute and account for it.

**Senator Sitte** - Says on page 5 line 28 it says the court shall impose. She asks if these are going to be mandatory fees and they won't have the right to wave them despite someone's ability to pay.

**Racek** - Responds there is a waver clause on page six.

**Senator Armstrong** - Asks if the \$25 victim/witness is a different fee than the community service supervision fee.

**Racek** - Replies that it is different and goes on to explain that fee.

**Senator Sitte** - Asks if these fees are high for the average person.

**Racek** - Explains the funds discussed in 2078 generate approximately 9 million dollars a biennium. Approximately 25,000 criminal cases per year that these funds could be applied to. Actual dollar amounts that they collect comes to approximately \$200 per case.

**Senator Sitte** - Asks about some of the factors used to access the fees.

**Racek** - Replies it becomes a skill set that is developed over time. He goes on to explain that in just a few minutes you have to decide. In cases they have accessed too much they reevaluate. He says they do the best they can.

**Senator Hogue** - Asks about the time savings.

**Racek** - Responds in the present system they have it is impossible to do. They process cases in a matter of minutes and make quick assessments. He said it diminishes the service.

**Senator Armstrong** - Asks if this will streamline and help the justice system.

**Racek** - Replies that it would be much better. He goes on to explain the handout of the most recent numbers.

**Senator Berry** - Asks if there is a down-side to any of this.

**Racek** - Responds the fear of the unknown for the various agencies. He said it is the courts intention that they still get the same amount of money.

**Sally Holewa** - State Court Administrator - Explains the bill and says bill has broad support. She said the bill is to save court time and court action, and there is a significant time savings. She goes on to explain some of the fees and says the bill as proposed would raise the court administration fee significantly. The goal is to collect a fee that will be sufficient to take care of all the other funds.

**Senator Grabinger** - Asks if there is a better way than asking the legislature to make this decision.

**Holewa** - Explains why the amendment came up.

### **Opposition**

**Richard Riha** - States Attorney for Burleigh County - Said his concern in his office is the victim/witness fee distribution. He explains how much was collected in these fees in different counties. His preference is to see the \$25 left as it is.

**Senator Armstrong** - Asks with the new formula how it equates with what they get now.

**Riha** - Replies that the new figures look like it will be the same.

Close bill 2078

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

SB2078  
1/16/2013  
Job #17285

Conference Committee

Committee Clerk Signature



**Minutes:**

## Committee work on SB2078

### Senator David Hogue - Chairman

Committee begins by discussing court costs. Senator Armstrong said he concurs that people appearing in court don't care what the fees are only that they have to pay. He thinks it's a great consolidation bill after the new numbers were in. He asks if the numbers could be changed in the interim to which Senator Hogue answered they go into statute so they cannot be changed in the interim. He goes on to say that if there is something radically wrong they could be changed in the next session. Senator Grabinger said he is concerned about the percentages that were put in but the new numbers are the most accurate and they will get everyone what they need out of this fund. He also believes this is a good idea. The committee spent some time discussing whether they should eliminate the word required and replace it with assessed but it was decided to leave the word required. They also discussed whether they should change indigent and it was decided to leave it the way it read.

Senator Sitte moves for a do pass on amendment  
Senator Armstrong second

Verbal vote - all in favor

Senator Sitte moves a do pass as amended  
Senator Grabinger second

### Discussion

Senator Lyson says he disagrees and will vote no because he feel it was too quick.  
Senator Sitte mentions that this bill came from the Judges Judicial Council, and it had quite a bit of discussion from judges.

Senator Berry asks if in fact we have corrected the percentages and Senator Armstrong it is the numbers.

The committee discusses the fiscal note attached to the bill.

Senator Sitte and Senator Grabinger agree to amending the motion to rerefer to appropriations

Senate Judiciary Committee  
SB2078  
1/16/2013  
Page 2

Do pass as amended and rerefer to appropriations

Vote - 5 yes, 1 no

Senator Sitte will carry

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/21/2012**

Bill/Resolution No.: SB 2078

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$2,100,000		\$2,100,000	
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for revenues from certain fees assessed in criminal cases to be allocated to identified funds based on a percentage of a total fee assessed rather than a specific dollar amount assessed for each fee. It also increases criminal court fees.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 takes away the continuing appropriation authority for the restitution collection assistance fund. The Court System collects approximately \$55,000 per biennium from this revenue source. The funding is used to defray expenses incident to the collection of restitution. The funding would go to the State General Fund. Section 3 increases the court administration fees for criminal cases. In addition, revenues from fees relating to restitution, criminal court administration, court facilities improvement, victim witness programs and community service supervision would be allocated based on the percentages outlined in subsection 2.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

By removing the Court System's continuing appropriation authority for the restitution collection assistance fund, State General Fund revenues would increase approximately \$55,000 per biennium. Based on estimated collection rates, the rate changes for the criminal court administration fee would increase overall revenues by approximately \$2.9 million. The majority of the additional revenues collected will go to the State General Fund, however the change in the allocation method to a set percentage would result in approximately \$850,000 of the revenue increase being allocated to other funds. Because most payments are not enough to cover the entire financial obligation, the courts established a priority for how payments are to be divided. In general, if a defendant has multiple cases, the payment is applied to the oldest case first. Within each case, the payment is divided using priorities established by the Administrative Council. Payments are allocated first based on the fees with the highest priority. The change in allocation of fees to a set percentage rather than a priority system may have an impact on revenues, but that impact can not be determined.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Court System would have to use existing State General Fund authority for costs associated with collection of outstanding restitution.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A

**Name:** Don Wolf

**Agency:** Court System

**Telephone:** 328-3509

**Date Prepared:** 01/02/2013

January 16, 2013



Handwritten signature and date: 1-16-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2078

Page 6, line 12, replace "Sixty-one" with "Sixty-eight"

Page 6, line 13, replace "Twenty-one" with "Fourteen"

Page 6, line 13, replace "three-tenths" with "five-tenths"

Page 6, line 15, replace "Fifteen" with "Twelve"

Page 6, line 15, replace "eight-tenths" with "two-tenths"

Page 6, line 17, replace "Nine-tenths of one" with "Four and seven-tenths"

Page 6, line 21, replace "Eight-tenths" with "Four-tenths"

Renumber accordingly

Date: 1/16/11  
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2078

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8947.01001

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By S Sitte Seconded By S Grabinger

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue			Senator Carolyn Nelson		
Vice Chairman Margaret Sitte			Senator John Grabinger		
Senator Stanley Lyson					
Senator Spencer Berry					
Senator Kelly Armstrong					

Total (Yes) all in favor (verbal) No \_\_\_\_\_

Absent A

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 1-16-13  
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2078**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8647.01001

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By S. Sitte Seconded By S. Armstrong

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson		X			
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment S. Sitte

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2078: Judiciary Committee (Sen. Hogue, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2078 was placed on the Sixth order on the calendar.

Page 6, line 12, replace "Sixty-one" with "Sixty-eight"

Page 6, line 13, replace "Twenty-one" with "Fourteen"

Page 6, line 13, replace "three-tenths" with "five-tenths"

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Renumber accordingly

**2013 SENATE APPROPRIATIONS**

**SB 2078**

# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Appropriations Committee Harvest Room, State Capitol

SB 2078  
January 29, 2013  
Job # 17912

Conference Committee

Committee Clerk Signature
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### Explanation or reason for introduction of bill/resolution:

A bill relating to costs for insufficient funds checks and assessment of court fees and to repeal sections relating to the compromise of judgments for court fees and costs by county commissioner.

### Minutes:

Testimony attached # 1-4
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**Chairman Holmberg** opened the hearing on SB 2078. All committee members were present except **Senator Krebsbach**.  
Legislative Council - Becky J. Keller  
OMB - Laney Herauf

**Chairman Holmberg** stated that this bill is re-referred from the judiciary committee, and we will not spend a lot of time on the policy, but we need to know about the dollars being used.

### **Sally Holewa, ND State Court Administrator**

Testified in favor of SB 2078  
Testimony attached # 1

(9:08) **Chairman Holmberg** asked if this has been shared with the Senate committee that heard the bill or did this come up after the hearing?

**Sally Holewa:** It came up after the hearing. It was with the assistance in the Commission on Indigent Defense that it was pointed out to us. Essentially, Don and I had read the bill to assume that the Indigent Defense fee of \$100 was going to be collected yet - and it is not going to be. We discovered that last week.

(10:01) **V.Chairman Grinberg:** Earlier in your testimony, the Commission on Alternatives to Incarceration didn't meet some sort of agreement. Is there a specific reason why or did they just not spend enough time on it?

**Sally Holewa:** I wasn't privy to those conversations. I know they took information on it, but there's no recommendation on it.

**Chairman Holmberg:** Was there anyone on this committee on that? Answer - No.

(11:16) **Rozanna C. Larson, States Attorney, Ward County**  
Testified **against** SB 2078.  
Testimony attached #2.

(18:33) **Chairman Holmberg:** Were you able to share your testimony with the Senate Judiciary committee?

**Roza Larson:** No, I was not able to. I asked Richard Riha to speak on my behalf that day. We had a conflict. I had court on that day.

(19:15) **Senator Carlisle:** Have you seen the amendment and does this change the dynamic for her concerns on the amount of money they lose? Answer: No, it doesn't.

(19:50) **Robin Huseby, Executive Director, Commission on Legal Counsel for Indigents.**

Testified neither for nor against, but was concerned about the financial ramifications this bill would have on her agency budget.

Testimony attached # 3

(21:53) **Richard Riha, Burleigh County States Attorney**  
Testified **against** SB 2078.

No written testimony.

I am speaking in opposition to this bill and share Ms. Larson's concerns. I don't have much problem with the concept of the bill - of having one fee to make things simple for the judges. What is an issue is the victim-witness fee. Last year, in Burleigh County, we collected \$55,000 in that fee. We split that with the local abused adult resource center. We had a need for an additional victim-witness coordinator, so the county commission approved that. They also made the fee go entirely to the county to support that position.

My concerns with this bill are: When it was first introduced, it had one set of numbers and then when we got to Senate Judiciary, those were changed. Now, last week we find out that there's a different distribution so I'm a little concerned with the math that's been presented with this. I think the legislature needs accurate numbers before you're going to pass a law and put it into statute.

I'm recommending Do Not Pass in its present form. Another option for this bill is the victim-witness fee could be separated out and leave it as it is. Then the rest of the bill could be as the court system wants. This is county money that we are talking about and the counties rely on this money. In Cass County and Grand Forks County, the judges there don't assess this fee to the extent that the judges in the South Central district do and the judges in the NW do.

Another thing you could do with this bill is there could be a study and I think that is the best option and see where all of these funds go and get an accurate accounting of the numbers so we can come back in two years and look at it again. Or the language of the bill could be changed so that any monies going in for victim-witness fees could be deposited in a county treasury in the county where the fee was assessed. We certainly oppose the bill in its present form.

(23:24) **Senator Carlisle:** You said the four options, but you would agree with the Ward County folks study as number one?      Answer: Yes.

(23:35) **Senator Mathern:** In these discussions, if there is any concerns about the social justice implications of fines and fees and penalties - or is it straight business? Isn't there any discussion about that issue?

**Richard Riha:** The counties weren't involved to my knowledge in the discussion of this bill and I presume that back when the \$25 fee was enacted by the legislature, that might have happened then, but right now we're looking at business. In Burleigh County's case, we hired another person because our case load has gone up to be able to help the victims and witnesses of crimes navigate their way through the court system. In that respect, yes.

(24:47) **Michelle Dresser-Ternes, Victim Witness Coordinator, Burleigh County State's Attorney's Office**  
Testified **against** SB 2078 as amended.  
Testimony attached # 4

**Chairman Holmberg:** Did you have an opportunity to testify at the Senate Judiciary meeting?    Answer: I did not.  
And I forgot to ask the state's attorney from Burleigh County. Did you get a chance to testify?    Answer: Yes.

(27:07) **Jerry Woodcox, Chairman, Burleigh County Commission**  
Testified **against** SB 2078.  
No written testimony. .

I agree totally with the two who have spoken for Burleigh County. This has been one of my portfolios for eight years and we've worked long and hard to get this built up to where we can now take on juvenile cases. We didn't do that until this year. The victim-witness program is very important for Burleigh County. We do a great job with it and are very proud of it. What was mentioned before, this is going to be revenue neutral. That's not revenue neutral for Burleigh County or for Ward County. It is revenue neutral for the whole system, but not for us. We'd really have a problem with this. We'd lose about \$40,000 a year. We don't see how that can happen. Our program is very important to us and we certainly don't want to see that come about. I'm definitely opposed to this and think it should go to a study. I like the idea of making only one fee. That makes sense, instead of six or seven. It certainly sounds more equitable to the people who are involved. That would be easier to palate, but for us to lose all that money that we've worked so hard to get would be very difficult for us. I would want you to oppose this bill as written.

(28:34) **Senator Carlisle:** You said you'd lose \$40,000 a year or did you mean a biennium?

**Jerry Woodcox:** We collect \$55,000 a year in our fees according to what these figures are. If it was distributed the way the bill was written, we would lose about \$28,000. It would be 30%.

**John V. Emter** spoke of an unfair restraining order against him and his involvement with the court system and said so many cases in court system should never be there. He stated that it cost him money to defend myself and that shouldn't be.

**Chairman Holmberg** explained that this committee focuses on the dollar amounts in the bill.

**John Emter:** You are appropriating money to prosecute me in a sense and I have to defend myself against it. If you appropriate money to fight me, I don't like that as a tax payer.

**V.Chairman Grinberg** said he would be willing to make a motion for do not pass or wait a day, visit with the chairman of the Judiciary committee and maybe hog house this into a study.

**Chairman Holmberg** said he would prefer to wait and also let the subcommittee look at it. It appears to have some problems.

**Chairman Holmberg** closed the hearing on SB 2078.

# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Appropriations Committee Harvest Room, State Capitol

SB 2078 subcommittee  
January 31, 2013  
Job # 18104

Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

This is a subcommittee hearing on a bill relating to the costs for insufficient funds, checks, and assessment of court fees.

### Minutes:

You may make reference to "attached testimony."

**Senator Kilzer** opened the subcommittee hearing on SB 2078. **Senator Carlisle** and **Senator Warner** were also present.

Legislative Council - Sheila M. Sandness  
OMB - Laney Herauf

**Senator Kilzer:** I'd like to assure Sally that she is only the messenger and she can speak about the components to the bill.

**Sally Holewa, ND State Court Administrator** - She explained that SB 2078 would eliminate several fees and reallocate another fee that are designed to raise revenue for specific accounts and replace them with a single court fee. The bill came up suddenly and they put the numbers together before they realized what was going on with the victim-witness fee. The counties have been assessing the fees and some counties would be harmed. We recognize those flaws, but maybe pass the bill regardless because there are benefits. If that is not palatable, we could request a study resolution.

**Senator Kilzer:** Do you dispute the figures from Ward and Burleigh counties?

**Sally Holewa:** We provided them with their figures.

**Senator Carlisle:** This would be DOA since we both live in Burleigh County and Warner is in Ward County.

**Senator Kilzer** said this subcommittee would like this put in the form of a study.

**Sheila M. Sandness:** This bill is out of policy at the moment. You could amend this bill to take the money out of it and make it a study.

**Senator Kilzer:** I'd like the policy committee to formulate just what goes into this study.

**Sheila M. Sandness** said she could check but she's not that familiar with the policies of re-referring it back to the policy committee. You could amend the money out of it and then refer it back.

**Senator Kilzer:** A study would have a cost to it also.

**Sheila M. Sandness:** Not if it's legislative management, because legislative management has committees already meeting and it would be assigned to a committee - unless you wanted the courts to do the study. You could assign them a study and have them present a report to an interim committee and then there'd be the opportunity to have the discussion when they present the report or you could assign a study to a legislative management interim committee.

**Senator Warner:** I would say the latter. If we just make it a discretionary study for legislative management - a "shall" consider.

**Senator Kilzer:** And give it to the interim judiciary committee.

**Senator Warner moved that the legislative management shall consider a study of how the court fees are handled and whether it would be feasible to combine the fees.**

**Senator Carlisle seconded**

**Senator Warner** asked Sally if the fees should be mandatory or discretionary for the courts to impose. There was a problem with some jurisdictions doing it and other jurisdictions not. We could leave it out of this study, but it might be something that the committee would want.

Sally said it's something the committee should look at. In MN, they basically repealed all of the separate fees and created a single fee but at that point, not only did they make it mandatory, they said it couldn't be waived and then the next year, they came back and added "that if the judge neglected to add the fee, the clerk was to amend the record to include it".

**Senator Kilzer** said that should be part of the study as to whether or not the fees are mandatory.

**Sheila M. Sandness** wanted to clarify that with the amendment, this bill would go away. It would be hoghoused into a study. A bill for an act to.....

**Senator Kilzer asked all in favor say aye. All opposed. Motion carried.**

**Senator Kilzer** closed the hearing on SB 2078.

# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Appropriations Committee Harvest Room, State Capitol

SB 2078  
February 4, 2013  
Job # 18210

Conference Committee

Committee Clerk Signature



### Explanation or for introduction of bill/resolution:

This is a subcommittee hearing on a bill relating to the costs for insufficient funds, checks and assessment of court fees.

### Minutes:

Legislative Council - Adam Mathiak

OMB - Laney Herauf

Subcommittee members: **Senator Kilzer, Senator Carlisle, Senator Warner.**

**Senator Kilzer** opened the subcommittee hearing on SB 2078. **Senator Carlisle** and **Senator Warner** were also present.

**Senator Carlisle** said there are two things that can be done with this bill; a possible study or it is DOA. He asked Sally Holewa if they really need this study. The committee can consider the bill but then it would have to get fixed.

### **Sally Holewa, ND State Court Administrator**

She talked to the chief justice and he would really like the study. They could do a formal work group and bring some alternatives to a committee, but he would like the legislature to weigh in on it and have a study.

**Senator Kilzer:** Did he have any certain areas because this is 7 different fees or funds. Did he want all of them or just some?

**Sally Holewa:** He would like to have them all studied. Right now, when we collect on payments, we set the priorities. We think the priority list is pretty good. If we go with the single fee, then it would be better for the legislature to decide what those proportions should be as far as paying out in percentages. Or if we stay with the separate fees, it would be better for them to decide what they think the priorities ought to be.

**Senator Kilzer:** I suppose the study would be whether to keep seven different fees or have just one fee. I can foresee that if they were all combined, that there would be an increasing frequency of the judge waiving all of them - or one large one. Maybe we should not let that be part of the study - combining all of them. Would that be too harsh?

**Sally Holewa:** I think he would like to see several different options. Part of it is whether he would make them continue to allow the fee to be waived.

**Senator Warner:** Where is the proper vehicle for this study? Is Commission on Alternatives to Incarceration still out there?

**Senator Carlisle:** We will be hearing that legislation because we have to renew it this year - on alternatives.

**Sally Holewa:** Last session, the legislative management did decide to do a study on fines and fees. It didn't have so much to do with the single fee option but with the priority of collection rates. That was sent to alternatives to incarceration. They obtained information but chose to make no recommendation. We thought maybe the standing judiciary committee would maybe be a better fix for that. We do have a court services administration committee at the court which has at least two legislators on it.

**Senator Kilzer:** Do you anticipate that their conclusion would be acceptable to state's attorneys? Because that's what it comes down to in the end.

**Sally Holewa:** Certainly they would consult with the state's attorneys, but what happens if they can't reach an agreement there? I suppose we could go back to the legislature and slug it out.

**Senator Kilzer:** Apparently on this bill, the state's attorneys said they didn't have input, is that correct? (Answer: Yes.) And this study would have state's attorneys input?

**Senator Carlisle moved that SB2078 be hoghoused into a study and that the Supreme Court will work with Legislative Council to get the best language for the full committee.**

**Senator Warner seconded.**

**Senator Kilzer** said he thinks they all agree on details or any confinements that we'd want input from the chief justice but we want to stay focused on this topic.

**Senator Kilzer** asked Adam Mathiak if he could draft up something that ties in with the existing studies that are in progress by the court system.

**Adam Mathiak** said he's not sure but it might be more of the legal side of Legislative Council, but he can check to see what need to be done to draft the appropriate legislation.

**Sally Holewa** said their staff attorney can work on it and submit it to Legislative Council. She commented that she had notified the attorneys for the 4 big counties as to the bill, but it was after it had already gone through our administrative council and the judicial conference and pre-filed. That was our first opportunity to share with them and we provided them with all the financial information that we were able to put together.

**Senator Kilzer** said we'll meet early next week to look at the amendment.

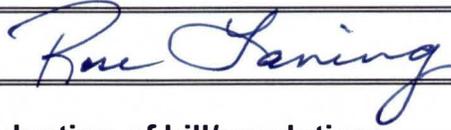
# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Appropriations Committee Harvest Room, State Capitol

SB 2078  
February 7, 2013  
Job # 18524

Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

This relates to costs for insufficient funds checks and assessment of court fees; and also relates to the compromise of judgments for court fees and costs by county commissioners.

### Minutes:

**Chairman Holmberg** opened the hearing on SB 2078.

**Senator Kilzer** (handed out amendment 13.8047.02001): SB 2078 was hog housed by your committee. The idea of the bill at the request of the Supreme Court was that they would combine all the various fees that the court system uses - and there were seven different ones, and charge that out as one fee to the defendant basically. We had a lot of opposition from the State's Attorneys of Ward County and Burleigh County in particular because there is a lot of diversity in how the judges waive these fees. So there's a big difference in the amount of income that comes to the counties.

The counties that I mentioned would have lost about \$50,000 each if this bill was to pass, and the chief justice of the Supreme Court didn't want to give up on the idea entirely. We asked that we do a study, so we hog housed it into a form of a study.

**Senator Kilzer moved Do Pass.**

**Senator Carlisle seconded the motion.**

**Senator Mathern:** What will not be able to be done by the courts if they don't have this income?

**Senator Kilzer:** It will stay the same as it is now. There will be quite a bit of variation in how the judges assess the fee and whether or not they waive them. One of the fears that I didn't mention is that when you add up these seven different fees and it gets to be a larger fee and there may be more reluctance on the part of the judges to assess it against the defendants, so there would be a further loss to the counties. It's kind of a double whammy if you would pass this bill to the counties.

**Chairman Holmberg:** All in favor of the amendment say "AYE". Voice vote carried.

**Senator Kilzer moved Do Pass as Amended on SB 2078.**

**Senator Carlisle seconded the motion.**

**Senator Carlisle will carry the bill on the floor.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/17/2013**

Revised  
Amendment to: SB 2078

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$1,086,000	\$(840,500)	\$1,086,000	\$(840,500)
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$(133,000)	\$(133,000)
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill consolidates several fees assessed in criminal cases and then allocates the associated revenues collected to identified funds based on a set percentage rather than a specific dollar amount assessed for each fee.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 takes away the continuing appropriation authority for the restitution collection assistance fund. The Court System collects approximately \$55,000 per biennium from this revenue source. The funding is used to defray expenses incident to the collection of restitution. The funding would go to the State General Fund. Section 3 sets court administration fees for criminal cases. In addition, revenues for the indigent defense administration fund, court facilities improvement fund, victim witness programs and community service supervision fund would be allocated based on the percentages outlined in subsection 2. A single criminal court fee would replace the facility, community service supervision and victim witness fees.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The proposed fee change and percentage allocation is based on actual revenues received over a five year period. By removing the Court System's continuing appropriation authority for the restitution collection assistance fund, State General Fund revenues would increase approximately \$55,000 per biennium. Based on estimated collection rates, the rate changes for the criminal fees would increase overall revenues by approximately \$112,500. However, the percentage allocation outlined in Section 3 would result in approximately \$970,000 of facility, community service supervision and victim witness fees being redirected to the general fund.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

**Name:** Don Wolf

**Agency:** Court System

**Telephone:** 328-3509

**Date Prepared:** 01/24/2013

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/21/2012**

Bill/Resolution No.: SB 2078

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$2,100,000		\$2,100,000	
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for revenues from certain fees assessed in criminal cases to be allocated to identified funds based on a percentage of a total fee assessed rather than a specific dollar amount assessed for each fee. It also increases criminal court fees.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 takes away the continuing appropriation authority for the restitution collection assistance fund. The Court System collects approximately \$55,000 per biennium from this revenue source. The funding is used to defray expenses incident to the collection of restitution. The funding would go to the State General Fund. Section 3 increases the court administration fees for criminal cases. In addition, revenues from fees relating to restitution, criminal court administration, court facilities improvement, victim witness programs and community service supervision would be allocated based on the percentages outlined in subsection 2.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

By removing the Court System's continuing appropriation authority for the restitution collection assistance fund, State General Fund revenues would increase approximately \$55,000 per biennium. Based on estimated collection rates, the rate changes for the criminal court administration fee would increase overall revenues by approximately \$2.9 million. The majority of the additional revenues collected will go to the State General Fund, however the change in the allocation method to a set percentage would result in approximately \$850,000 of the revenue increase being allocated to other funds. Because most payments are not enough to cover the entire financial obligation, the courts established a priority for how payments are to be divided. In general, if a defendant has multiple cases, the payment is applied to the oldest case first. Within each case, the payment is divided using priorities established by the Administrative Council. Payments are allocated first based on the fees with the highest priority. The change in allocation of fees to a set percentage rather than a priority system may have an impact on revenues, but that impact can not be determined.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Court System would have to use existing State General Fund authority for costs associated with collection of outstanding restitution.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A

**Name:** Don Wolf

**Agency:** Court System

**Telephone:** 328-3509

**Date Prepared:** 01/02/2013

January 31, 2013

2/7/13  
TK

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2078

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of the assessment of fees by courts."

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ASSESSMENT OF FEES BY COURTS.** During the 2013-14 interim, the legislative management shall consider studying the assessment of fees by courts, the feasibility and desirability of combining various court fees, and whether courts should be mandated to impose fees established by statute. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

Date: 2-7-13

Roll Call Vote # 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2078

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number 13,8047, 02001

Action Taken Do pass as amended

Motion Made By Kilzer Seconded By Carlisle

Senators	Yes	No	Senator	Yes	No
Chariman Ray Holmberg	✓		Senator Tim Mathern	✓	
Co-Vice Chairman Bill Bowman	✓		Senator David O'Connell	✓	
Co-Vice Chair Tony Grindberg	✓		Senator Larry Robinson	✓	
Senator Ralph Kilzer	✓		Senator John Warner	✓	
Senator Karen Krebsbach	✓				
Senator Robert Erbele	✓				
Senator Terry Wanzek	✓				
Senator Ron Carlisle	✓				
Senator Gary Lee	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Carlisle

If the vote is on an amendment, briefly indicate intent:

Motion on the amendment.

**REPORT OF STANDING COMMITTEE**

**SB 2078, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2078 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of the assessment of fees by courts.

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

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ASSESSMENT OF FEES BY COURTS.** During the 2013-14 interim, the legislative management shall consider studying the assessment of fees by courts, the feasibility and desirability of combining various court fees, and whether courts should be mandated to impose fees established by statute. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

**2013 HOUSE JUDICIARY**

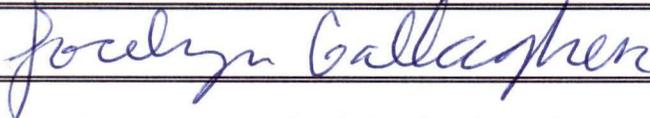
**SB 2078**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

SB 2078  
March 19, 2013  
Job 20149

Conference Committee



## Explanation or reason for introduction of bill/resolution:

Act to provide for a legislative management study of the assessment of fees by courts.

## Minutes:

**Vice Chairman Larry Klemin:** Opens hearing on SB 2078.

**Jim Gange, Office of State Court Administrator:** Provided explanation of the bill. The bill attempted to establish a new structure for the assessment and disposition of court fees.

**Rep. Bill Kretschmar:** (3:20) Does the court want to go back to the original bill?

**Jim Gange:** However much it is desired, I suspect it would not be successful.

**Rep. Kathy Hogan:** What process did you use to decide the structure for the bill?

**Jim Gange:** The concept was proposed by District Court Judge Raseck. It looked to be a better way of dealing with fees than we have now.

**Rep. Kathy Hogan:** Do you think if we didn't have an interim study that you could work with the court system to get the consensus with the various courts and state's attorneys?

**Jim Gange:** The advantage of the interim study is that it draws a wider constituency.

**Rep. Kathy Hogan:** If we could get court consensus do you think it would pass?

**Jim Gange:** I would hope that would be the case.

**Vice Chairman Larry Klemin:** Who did we get that report from?

**Jim Gange:** I'm not sure.

**Chairman Koppelman:** Any other testimony in support of SB 2078? closed the hearing.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

SB 2078  
JOB 20410  
Date March 25, 2013

Conference Committee

*Carman Hilde*

## Explanation or reason for introduction of bill/resolution:

Relating to costs for insufficient funds checks and assessment of court fees, relating to compromise of judgments for court fees and costs by county commissioners.

## Minutes:

**Chairman Kim Koppelman:** Opens SB 2078 for committee action. This is a study resolution for court fees. It was a seven page bill that was amended to a study.

**Rep. Lois Delmore:** It has been changed to just to a study?

**Chairman Kim Koppelman:** Yes.

**Rep. Lois Delmore:** Made a motion for a do pass.

**Rep. Andy Maragos:** Second the motion.

Vote 14-0-0

**Rep. Gary Paur:** Will carry the bill.

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/17/2013**

Revised  
 Amendment to: SB 2078

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

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**Name:** Don Wolf

**Agency:** Court System

**Telephone:** 328-3509

**Date Prepared:** 01/24/2013

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/21/2012**

Bill/Resolution No.: SB 2078

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$2,100,000		\$2,100,000	
Expenditures						
Appropriations						

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Counties			
Cities			
School Districts			
Townships			

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The Court System would have to use existing State General Fund authority for costs associated with collection of outstanding restitution.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A

**Name:** Don Wolf

**Agency:** Court System

**Telephone:** 328-3509

**Date Prepared:** 01/02/2013

Date: 3-25-13  
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2078**

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Paur

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2078, as reengrossed: Judiciary Committee (Rep. K. Koppelman, Chairman)**  
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Reengrossed SB 2078 was placed on the Fourteenth order on the calendar.

**2013 TESTIMONY**

**SB 2078**



Frank L. Racek  
Presiding District Court Judge  
East Central Judicial District

CASS COUNTY COURTHOUSE  
211 S. 9<sup>th</sup> St.  
PO Box 2806  
Fargo, ND 58108-2806

(701) 451-6951  
Fax: (701) 451-6973  
E-mail: [fracek@ndcourts.gov](mailto:fracek@ndcourts.gov)

## Odyssey User Group Charter

### I. Statement of Purpose

The purpose of the Odyssey User Group is to provide a forum to receive and act on issues and requests related to the Odyssey case management system in a timely manner that furthers the goals established by the judiciary.

### II. Goals

In carrying out its purpose, the Odyssey User Group will be guided by these goals:

- a. To minimize duplication of effort;
- b. To minimize the need for use and retention of paper documents;
- c. To use computer processing for standard decision-making; and
- d. To identify and implement best practices in business processes.

Best Practices are defined as those business practices best utilizing Odyssey and court personnel to reach the stated goals.

### III. Make-Up of Group

#### A. Members:

- a. One assistant trial court administrator;
- b. Two trial court judges;
- c. One court reporter or recorder;
- d. One juvenile court officer;
- e. Four clerks of court, one of whom must be the current president of the North Dakota Clerk's Association, one contract clerk, one state-employed clerk I, and one state-employed clerk II;
- f. One justice or staff member of the Supreme Court; and
- g. Clerk of the Supreme Court or the clerk's designee

Members of Odyssey User Group will be appointed by the Chair of the Court Technology Committee in consultation with committee members.

#### B. Ex-Officio:

- a. One staff attorney; and
- b. One trial court administrator.

Ex-officio members of Odyssey User Group will be appointed by the state court administrator.

## Court Tech Priorities 2013-2015

1. Employment Priorities:

Stable IT workforce.
2. High Yield IT Projects:
  - A. E-Filing. Move to mandatory for all civil. (21% of case initiations - 36,500 cases) (see attached MN item)
  - B. Expand E-Citations to all law enforcement. (56% of case initiations - 97,700 cases)
  - C. Work on CJIS integration to include transfer of items currently sent by court (jail discharges, judgments, orders, etc.) (impacts 13.9% of cases plus higher percentage of workload) 24,000 cases.
  - D. Improve clerk sessions works - current projects include judgments and note sheets - need to develop notes and money solutions. Significant staff time saved by not having to re-enter data in Odyssey.
  - E. E-Signatures of outside documents (would eliminate printing, signing and rescanning of orders on entire caseload).
  - F. Criminal Case Initiation Solution - 24,000 case initiations and necessity of scanning all of these documents.
3. Important Accuracy Upgrades:
  - A. Proper restriction of files if not all counts deferred.
  - B. Accuracy of level of offense (see attached).
  - C. Other.
4. Priority Studies:
  - A. Continuation of court if Odyssey failure.
  - B. Juvenile case management system.
5. High Yield Legislation:
  - A. Bail property of defendant - end requirement of bond remitter files on approximately 24,000 criminal files per year.
  - B. Consolidate current seven fees into one (court administrative fee, indigent defense and facility improvement, public defender application, victim, community service, indigent defense recoup, check collection). Legislature set percentage of each to receive from single fee. Eliminates manual calculations in session works, and significantly simplifies bookkeeping.
  - C. Consolidation of non-criminal traffic payments - reduces equipment and training. Provides single spot to resolve issues.
6. Education and Advancement:
  - A. Expand clerk and judge training
  - B. Explore contact with other (Advancement)

EXH 4

## JUDICIARY COMMITTEES CONSULTED ON BILL

Odyssey User Group

Court Tech. Committee

Admin. Council

Judicial Conf.

Supreme Court

STATUS QUO

**Criminal Court fees:**

**Criminal Court Administration Fee**

Class B misdemeanor	\$125
Class A misdemeanor	\$200
Class C felony	\$400
Class B felony	\$650
Class A & AA felony	\$900
Indigent Defense and Facility Improvement Fee	\$100
Indigent Defense Application Fee	\$25
Victim Witness Fee	\$25
Community Service Fee	\$25
Indigent Defense Recoupment Fee	
Misdemeanor	\$260
Felony	\$455
Check Collection Service Fee	\$10 or 25% of the restitution, whichever is greater

## Appendix D: North Dakota District Court Clerks' Statewide Staff Needs Assessment Model

GROUP	Case Type	Case Weight	Cases Filed	Workload (in minutes)
CRIMINAL	1. Criminal - Major	398.94	4,257.0	1,698,275
	2. Criminal - Minor	160.00	21,132.5	3,381,200
	3. Criminal - Summary	8.17	98,317.5	803,383
CIVIL	4. Civil - Major	360.00	482.5	173,700
	5. Civil - Minor	85.09	21,551.5	1,833,901
	6. Civil - Summary	58.83	2,812.5	165,469
DOMESTIC	7. Family - Major	282.60	5,712.5	1,614,353
	8. Family - Minor	282.60	1,542.5	435,911
	9. Family - Summary	27.00	339.0	9,153
PROBATE	10. Probate - Major	209.06	1,575.5	329,374
	11. Probate - Minor	120.67	3,651.5	440,625
	12. Probate - Summary	79.94	424.5	33,936
JUVENILE	13. Juvenile - Delinquency	136.08	1,681.5	228,816
	14. Juvenile - Dependency	175.75	825.5	145,082
	15. Juvenile - Other	10.00	40.0	400
Workload (cases filed * case weight)				11,293,577
Court Staff Annual Availability 218.75 days				98,438
Non-case specific time 90 minutes/day				19,688
Availability for Case Specific Work				78,750
Court Clerk Staff Demand				143.41
Court Clerk Staff Availability				119.88
Court Clerk Staff Need				23.53

## 25,000 CRIMINAL CASES

7 Different Fees

1. Judge - 7 determinations
2. Clerk - in court - 7 entries
3. Judgment - 7 items
4. Accounts Receivable - 7 categories
5. Payments on Case - 7 disposition of amounts
6. Day/Month End - 7 categories to account for

$$25,000 \times 7 \times 6 = 1,050,000$$

vs.

$$(25,000 \times 1 \times 5) + (53 \times 12 \times 1) = 125,636$$

Which of these are paid  
to General Fund?



AVERAGE REVENUES PER FISCAL YEAR

	6/30/2006	6/30/2007	6/30/2008	6/30/2009	6/30/2010	6/30/2011	Average per Fiscal Year	Percent of Total
<b>General Fund:</b>								
Criminal Court Admin Fees <i>221</i>	2,099,504	2,257,316	2,522,107	2,457,613	2,327,955	2,391,052	2,342,591	57.3%
Indigent Recoupment <i>237</i>	194,257	180,194	196,340	186,882	144,671	143,848	174,365	4.3%
<b>General Fund:</b>	<b>\$ 2,293,761</b>	<b>\$ 2,437,510</b>	<b>\$ 2,718,446</b>	<b>\$ 2,644,495</b>	<b>\$ 2,472,626</b>	<b>\$ 2,534,900</b>	<b>\$ 2,516,956</b>	<b>61.5%</b>
<b>Special Funds:</b>								
Indigent Defense Application Fee <i>282</i>	70,887	81,609	95,896	86,985	90,620	\$89,898	85,983	2.1%
Indigent Defense Facility Fee - Courts <i>279</i>	554,079	719,304	617,997	705,934	547,624	\$728,568	645,584	15.8%
Indigent Defense Facility Fee - Commission <i>282</i>	816,588	719,529	907,997	705,935	845,514	\$720,678	786,040	19.2%
Restitution Collection Assistance - <i>Gen'l fund?</i>	18,850	29,058	28,988	23,716	26,135	\$21,787	24,756	0.6%
Community Service Supervision Fee <i>265</i>	-	-	26,547	45,072	28,088	\$23,290	30,749	0.8%
<b>Special Funds:</b>	<b>\$ 1,460,404</b>	<b>\$ 1,549,501</b>	<b>\$ 1,677,425</b>	<b>\$ 1,567,642</b>	<b>\$ 1,537,982</b>	<b>\$ 1,584,221</b>	<b>\$ 1,573,112</b>	<b>38.5%</b>
<b>Total All Funds</b>	<b>\$ 3,754,165</b>	<b>\$ 3,987,011</b>	<b>\$ 4,395,871</b>	<b>\$ 4,212,137</b>	<b>\$ 4,010,608</b>	<b>\$ 4,119,120</b>	<b>\$ 4,090,068</b>	<b>100.0%</b>

plus

COUNTY REST. FEES

CASS

CF

WARD

Bunleigh

Victim - Witness Fees - County

8/12	400
7/12	400
6/12	425
5/12	230
4/12	625
3/12	695
2/12	425
1/12	600

2078 (2)

**REVENUES PER BIENNIUM**

	2005-07 Biennium	2005-07 Percent	2007-09 Biennium	2007-09 Percent	2009-11 Biennium	2009-11 Percent	2011-13 Estimate	2011-13 Percent
Criminal Court Admin Fees	\$4,356,820	60.4%	\$4,979,719	58.4%	\$4,719,007	57.8%	\$ 5,412,099	57.8%
1/ Restitution Collection Assistance Fund (268)	\$47,908	0.7%	\$52,704	0.6%	\$47,923	0.6%	\$ 49,664	0.5%
<b>Total General Fund</b>	<b>\$4,404,728</b>	<b>61.1%</b>	<b>\$5,032,423</b>	<b>59.0%</b>	<b>\$4,766,929</b>	<b>58.4%</b>	<b>\$ 5,461,763</b>	<b>58.3%</b>
2/ Indigent Defense Facility Fee -Courts (279) C.A.	\$1,273,383	17.7%	\$1,323,931	15.5%	\$1,276,192	15.6%	\$1,490,740	15.9%
2/ Indigent Defense Admin Fee -I.D. (282) C.A.	\$1,536,117	21.3%	\$1,613,932	18.9%	\$1,566,192	19.2%	\$1,780,740	19.0%
Community Service Fee (320) DOCR		0.0%	\$71,619	0.8%	\$51,378	0.6%	\$ 54,282	0.6%
Victim Witness Fee (county)		0.0%	\$483,183	5.7%	\$499,431	6.1%	\$580,758	6.2%
<b>Total Special Funds</b>	<b>\$2,809,501</b>	<b>38.9%</b>	<b>\$3,492,666</b>	<b>41.0%</b>	<b>\$3,393,193</b>	<b>41.6%</b>	<b>\$3,906,520</b>	<b>41.7%</b>
<b>Total</b>	<b>\$7,214,228</b>	<b>100.0%</b>	<b>\$8,525,089</b>	<b>100.0%</b>	<b>\$8,160,122</b>	<b>100.0%</b>	<b>\$9,368,283</b>	<b>100.0%</b>

- 1/ Proposed bill would change restitution collection from special funds to General Fund revenue.  
 2/ Indigent Defense became a separate agency in 2006.

**2011-13 BIENNIUM ESTIMATE**

Estimated Revenues 2011-13 Biennium	Revenues Collected to Date	Percent of Biennium	Biennium Estimate
Criminal court administration fee	\$ 3,608,066	66.7%	\$ 5,412,099
Restitution collection	\$ 33,109	66.7%	\$ 49,664
Court facility fee - courts*	\$ 945,493	66.7%	\$1,490,740
Facility fee - Indigent Defense*	\$ 1,235,493	66.7%	\$1,780,740
Community service supervision fee	\$ 36,188	66.7%	\$ 54,282
Victim witness fee	\$ 290,379	50.0%	\$ 580,758
* Court facility fee - courts	\$ 945,493	66.7%	\$ 1,418,240
Facility fee - Indigent Defense	\$ 1,235,493	66.7%	\$ 1,853,240
Estimated 2011-13 Court facility revenues	\$ 2,180,986		\$ 3,271,479
<i>Allocation</i>			
Court system share	\$460,000	\$1,030,740	\$1,490,740
Indigent Defense share	\$750,000	\$1,030,740	\$1,780,740
<b>Total estimated revenues</b>	<b>\$1,210,000</b>	<b>\$2,061,479</b>	<b>\$3,271,479</b>

**Proposed Allocation:**

General fund	61.2%
Judicial Branch facility fee	15.8%
Indigent Defense admin.	21.3%
Victim witness fee	0.9%
Community service fee	0.8%
<b>Total</b>	<b>100.0%</b>

**Priority list:**

- Indigent Defense application fee
- ID/Court facility fees
- Victim witness fee
- Restitution
- Fines/forfeitures
- Court administration fee
- Restitution collection
- Community service supervision
- Indigent Defense recoupment
- City transfers

**SB 2078 FISCAL IMPACT - 2013-15 BIENNIUM ESTIMATE**

Estimated Revenues 2013-15 Biennium	Current Rates & Allocation			Proposed Rates/Current Allocation			Proposed Allocation	
	Current Rates	2013-15 Revenues	Percent	Proposed Rates	2013-15 Revenues	Percent	2013-15 Revenues	Percent
<b><u>General Fund</u></b>								
Class B Misdemeanor	\$125	\$2,424,600	44.9%	\$250	\$4,024,836	48.1%	\$4,024,836	
Class A Misdemeanor	\$200	\$1,506,600	27.9%	\$400	\$2,500,956	29.9%	\$2,500,956	
Class C Felony	\$400	\$977,400	18.1%	\$600	\$1,299,942	15.5%	\$1,299,942	
Class B Felony	\$650	\$264,600	4.9%	\$800	\$304,901	3.6%	\$304,901	
Class A or AA Felony	\$900	\$226,800	4.2%	\$1,000	\$243,432	2.9%	\$243,432	
<b>Total Criminal court administration fee</b>		<b>\$5,400,000</b>			<b>\$8,374,067</b>		<b>\$8,374,067</b>	
Restitution collection assistance		\$0			\$0		\$55,000	
<b>Total General Fund revenue</b>		<b>\$5,400,000</b>			<b>\$8,374,067</b>			
<b>Total General Fund allocation</b>		<b>\$5,400,000</b>	<b>57.5%</b>		<b>\$8,374,067</b>	<b>67.7%</b>	<b>\$7,571,705</b>	<b>61.2%</b>
<b><u>Special funds</u></b>								
Restitution collection assistance		\$55,000	0.6%		\$55,000	0.4%	\$0	0.0%
Court facility fee - Courts		\$1,510,000	16.1%		\$1,510,000	12.2%	\$1,954,787	15.8%
Court facility fee - Indigent Defense admin		\$1,800,000	19.2%		\$1,800,000	14.5%	\$2,635,250	21.3%
<b>Total facility fee</b>		<b>\$3,310,000</b>			<b>\$3,310,000</b>		<b>\$4,590,037</b>	
Community service supervision fee		\$53,000	0.6%		\$53,000	0.4%	\$98,977	0.8%
Victim witness fee (county)		\$580,000	6.2%		\$580,000	4.7%	\$111,349	0.9%
<b>Total special funds revenue</b>		<b>\$3,998,000</b>			<b>\$3,998,000</b>			
<b>Total special funds allocation</b>		<b>\$3,998,000</b>	<b>42.5%</b>		<b>\$3,998,000</b>	<b>32.3%</b>	<b>\$4,800,362</b>	<b>38.8%</b>
<b>Total Revenues</b>		<b>\$9,398,000</b>	<b>100.0%</b>		<b>\$12,372,067</b>	<b>100.0%</b>	<b>\$12,372,067</b>	<b>100.0%</b>

**PROPOSED AMENDMENTS TO SENATE BILL NO. 2078**

Page 6, line 12, replace "Sixty-one" with "Sixty-eight"

Page 6, line 12, replace "two-tenths" with "one-tenth"

Page 6, line 13, replace "Twenty-one" with "Fourteen"

Page 6, line 13, replace "three-tenths" with "five-tenths"

Page 6, line 15, replace "Fifteen" with "Twelve"

Page 6, line 15, replace "eight-tenths" with "two-tenths"

Page 6, line 17, replace "Nine-tenths of one" with "Four and seven-tenths"

Page 6, line 21, replace "Eight-tenths" with "Four-tenths"

Renumber accordingly

#1

Senate Bill 2078  
**Senate Appropriations Committee**  
**Presented by Sally Holewa**  
**January 29, 2013**

Good afternoon, Chairman Holmberg and members of the Committee. For the record, my name is Sally Holewa. I am the State Court Administrator. I am here today to testify in support of Senate Bill 2078.

Senate Bill 2078 would eliminate several fees and reallocate another fee that are designed to raise revenue for specific accounts and replace them with a single court fee. The revenue from this single court fee would then be allocated by percentage to several funds. The bill is intended to address the difficulties associated with collecting so many fees. A related inquiry was undertaken by the Commission on Alternatives to Incarceration during the interim but they did not reach a conclusion on what recommendation.

This proposal was reviewed and approved by the court's Administrative Council and by the Judicial Conference as one way to address our judge and staff shortage. Currently, there are 7 fees that can be assessed against a defendant, depending on the charge, the jurisdiction, and the specific sentence. We estimate that under the current system of individual fees this requires judges and court staff to consider the fees 6 times for each criminal case. While these considerations are not necessarily time consuming, they do open the door for mistakes to be introduced into the system. Eliminating just three of these fees can save judges and court staff up to 450,000 decision-making points or actual computer transactions per year. It will save time by eliminating the need for some manual calculations in the courtroom and simplify the clerk's overall bookkeeping duties. A single fee with a percentage allocation will save programming costs and staff time in the future if the state decides to fund more programs or change the amounts dedicated to each program.

The three fees that we are proposing be repealed are:

**Victim-Witness Fee 27-01-10(1):**

Purpose: To provide funding for private, nonprofit domestic violence or sexual assault programs and victim and witness advocacy programs whose primary function is to provide direct services to victims and witnesses<sup>1</sup>

Amount: Not more than \$25

Assessed: Persons convicted of a crime for which the maximum penalty imposed includes imprisonment if the county has designated a program to receive the funds

Allocation: Retained by the county

**Indigent Defense/Court Facility Fee 29-26-22(2):**

Purpose: To provide additional funding for Indigent Defense and to fund grants to the counties to offset the cost of courthouse maintenance and improvement

Amount: \$100

Assessed: Persons convicted of a crime for which the maximum penalty imposed includes imprisonment

Allocation: The first \$750,000 collected during the biennium is deposited with the state in the Indigent Defense Administration Fund as a continuing appropriation to the Commission on Legal Counsel for Indigents. The next \$460,000 is deposited with the state in the Court Facilities Improvement and Maintenance Fund as a continuing appropriation to the Judicial Branch for the purpose of providing grants to the counties. After these thresholds are met, all other deposits are split equally between the funds.

**Community Service Supervision Fee 29-26-22(3):**

Purpose: To provide funding to private community corrections agencies<sup>2</sup>

Amount: \$25

Assessed: Persons required to perform community service work as part of their sentence.

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<sup>1</sup> Our records indicate that six counties (Barnes, Billings, Eddy, Slope, Tower and Wells) do not have a designated victim/witness provider

<sup>2</sup> Currently there are 14 private providers in the state: Barnes, Bismarck (urban), Bismarck (rural), Devils Lake, Fargo, Grand Forks, Jamestown, Minot, Richland County, Rugby, Sargent County, Wells County and Williston

Allocation: Deposited with the state in the Community Service Supervision Fund. The Department of Corrections and Rehabilitation may access the fund, subject to legislative appropriation, for the purpose of providing grants to private providers who maintain community service programs.

In addition to repealing the fees listed above, the bill would re-allocate the Restitution Collection fee.

**Restitution Collection Fee 12.1-32-08 (2)**

Purpose: To defray the cost of collecting restitution

Assessed: Persons convicted of issuing checks without sufficient funds or without an account

Amount: Either \$10 or 25% of the restitution ordered, whichever is greater, but not to exceed \$1,000

Current Allocation: Retained by the county if the county is responsible for restitution collection (applies only to the counties of Burleigh, Cass, Grand Forks and Ward), otherwise deposited with the state in the Restitution Collection Assistance Fund as a continuing appropriation for the court

Proposed Allocation: Would abolish the Restitution Collection Assistance Fund so fees collected under this statute would be deposited in the General Fund; those counties collecting restitution would continue to retain this fee

The court administration fee would be renamed the “court fee” and the current rates would be increased as follows:

<b>Level of Conviction</b>	<b>Current Fee</b>	<b>Proposed Fee</b>
Class B Misdemeanor	\$125	\$250
Class A Misdemeanor	\$200	\$400
Class C Felony	\$400	\$600
Class B Felony	\$650	\$800
Class A/Class AA Felony	\$900	\$1,000

It should be noted that although the dollar amount for the court fee is higher than the current amount, it may or may not be higher than what individual defendants are currently being assessed. For example, under the current statutes, depending

on the charge and sentence, a person charged with a class B misdemeanor could be assessed:

<b>Defendant 1</b>	<b>Defendant 2</b>	<b>Defendant 3</b>
Court Admin. Fee \$125	Court Admin. Fee \$125	Court Admin. Fee \$125
<u>Ind. Def./Facility \$100</u>	Ind. Def./Facility \$100	Ind. Def./Facility \$100
<b>Total \$225</b>	<u>NSF check fee \$ 25</u>	Victim Witness \$ 25
	<b>Total \$250</b>	<u>Community Service\$ 25</u>
		<b>Total \$275</b>

Because most defendants are not able to pay in full on the date of sentencing, we set them up on payment plans. When the court receives the payment, it is split based on the priority schedule adopted by the court’s Administrative Council (see attached). The Administrative Council includes the Chief Justice, all of the district court presiding judges, and several others.

Our goal in drafting this bill is to ensure that it is revenue neutral. Although we anticipate it will be revenue neutral on a statewide basis, our biggest concern is holding even on a county-by-county basis when it comes to the victim-witness fee. Because there is a wide disparity in the amount of fees assessed and collected per county, changing to a flat percentage may mean that some counties who collected more will receive less revenue and some counties who collected less will receive more revenue. At the same time, it will make the distribution of these funds more equitable statewide.

The current fiscal note and percentage allocation in the engrossed bill were based on an incorrect assumption by my office regarding the intent of the bill. To correct that, I have attached a proposed amendment to adjust the percentage allocation in SB 2078. If the amendment is adopted, we will be issuing a new fiscal note which will show minimal fiscal impact to the General and other funds. Don Wolf, our Director of Finance, is here today and available to answer any questions you may have about the fiscal implications of this bill.

**PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2078**

Page 6, line 12, replace "Sixty-eight and two-tenths" with "Fifty-eight"

Page 6, line 13, replace "Fourteen" with "Nineteen" and "five-tenths" with "two-tenths"

Page 6, line 15, replace "Twelve and two-tenths" with "Sixteen"

Page 6, line 17, replace "Four" with "Six" and "seven-tenths" with "two-tenths"

Page 6, line 21, replace "Four-tenths" with "Six-tenths"

Renumber accordingly

**REVENUES PER BIENNIUM**

	2005-07 Biennium	2005-07 Percent	2007-09 Biennium	2007-09 Percent	2009-11 Biennium	2009-11 Percent	2011-13 Estimate	2011-13 Percent
Criminal Court Admin Fees	\$4,356,820	60.4%	\$4,979,719	58.4%	\$4,719,007	57.8%	\$ 5,412,099	57.8%
1/ Restitution Collection Assistance Fund (268)	\$47,908	0.7%	\$52,704	0.6%	\$47,923	0.6%	\$ 49,664	0.5%
<b>Total General Fund</b>	<b>\$4,404,728</b>	<b>61.1%</b>	<b>\$5,032,423</b>	<b>59.0%</b>	<b>\$4,766,929</b>	<b>58.4%</b>	<b>\$ 5,461,763</b>	<b>58.3%</b>
2/ Indigent Defense Facility Fee -Courts (279) C.A	\$1,273,383	17.7%	\$1,323,931	15.5%	\$1,276,192	15.6%	\$1,490,740	15.9%
2/ Indigent Defense Admin Fee -I.D. (282) C.A.	\$1,536,117	21.3%	\$1,613,932	18.9%	\$1,566,192	19.2%	\$1,780,740	19.0%
Community Service Fee (320) DOCR		0.0%	\$71,619	0.8%	\$51,378	0.6%	\$ 54,282	0.6%
Victim Witness Fee (county)		0.0%	\$483,183	5.7%	\$499,431	6.1%	\$580,758	6.2%
<b>Total Special Funds</b>	<b>\$2,809,501</b>	<b>38.9%</b>	<b>\$3,492,666</b>	<b>41.0%</b>	<b>\$3,393,193</b>	<b>41.6%</b>	<b>\$3,906,520</b>	<b>41.7%</b>
<b>Total</b>	<b>\$7,214,228</b>	<b>100.0%</b>	<b>\$8,525,089</b>	<b>100.0%</b>	<b>\$8,160,122</b>	<b>100.0%</b>	<b>\$9,368,283</b>	<b>100.0%</b>

1/ Proposed bill would change restitution collection from special funds to General Fund revenue.

2/ Indigent Defense became a separate agency in 2006.

**2011-13 BIENNIUM ESTIMATE**

Estimated Revenues 2011-13 Biennium	Revenues Collected to Date	Percent of Biennium	Biennium Estimate
Criminal court administration fee	\$ 3,608,066	66.7%	\$ 5,412,099
Restitution collection	\$ 33,109	66.7%	\$ 49,664
Court facility fee - courts*	\$ 945,493	66.7%	\$1,490,740
Facility fee - Indigent Defense*	\$ 1,235,493	66.7%	\$1,780,740
Community service supervision fee	\$ 36,188	66.7%	\$ 54,282
Victim witness fee	\$ 290,379	50.0%	\$ 580,758
* Court facility fee - courts	\$ 945,493	66.7%	\$ 1,418,240
Facility fee - Indigent Defense	\$ 1,235,493	66.7%	\$ 1,853,240
Estimated 2011-13 Court facility revenues	\$ 2,180,986		\$ 3,271,479
<u>Allocation</u>			
Court system share	\$460,000	\$1,030,740	<b>\$1,490,740</b>
Indigent Defense share	\$750,000	\$1,030,740	<b>\$1,780,740</b>
Total estimated revenues	\$1,210,000	\$2,061,479	\$3,271,479

**Proposed Allocation:**

General fund	61.2%
Judicial Branch facility fee	15.8%
Indigent Defense admin.	21.3%
Victim witness fee	0.9%
Community service fee	0.8%
<b>Total</b>	<b>100.0%</b>

**Priority list:**

Indigent Defense application fee  
 ID/Court facility fees  
 Victim witness fee  
 Restitution  
 Fines/forfeitures  
 Court administration fee  
 Restitution collection  
 Community service supervision  
 Indigent Defense recoupment  
 City transfers

**ENGROSSED SB 2078 FISCAL IMPACT - 2013-15 BIENNIUM ESTIMATE**

Estimated Revenues 2013-15 Biennium	Current Rates & Allocation			Proposed Rates			Engrossed Bill		Proposed Amendment	
	Current Rates	2013-15 Revenues	Percent	Proposed Rates	2013-15 Revenues	Percent	2013-15 Revenues	Percent	2013-15 Revenues	Percent
<b>General Fund</b>										
Class B Misdemeanor	\$125	\$2,424,600	44.9%	\$250	\$4,606,740	48.7%				
Class A Misdemeanor	\$200	\$1,506,600	27.9%	\$400	\$2,862,540	30.3%				
Class C Felony	\$400	\$977,400	18.1%	\$600	\$1,417,230	15.0%				
Class B Felony	\$650	\$264,600	4.9%	\$800	\$319,555	3.4%				
Class A or AA Felony	\$900	\$226,800	4.2%	\$1,000	\$249,480	2.6%				
<b>Total Criminal court administration fee</b>		\$5,400,000			\$9,455,545				\$5,459,053	57.4%
Restitution collection assistance		\$0			\$0				\$57,063	0.6%
<b>Total General Fund allocation</b>		\$5,400,000	57.4%		\$9,455,545	99.4%	\$6,486,192	68.2%	\$5,516,116	58.0%
<b>Special funds</b>										
Restitution collection assistance*		\$55,000	0.6%		\$55,000	0.7%		0.0%	\$0	0.0%
Court facility fee - Courts		\$1,510,000	16.0%		\$0	0.0%	\$1,160,287	12.2%	\$1,521,687	16.0%
Court facility fee - Indigent Defense admin		\$1,800,000	19.2%		\$0	0.0%	\$1,379,029	14.5%	\$1,826,025	19.2%
<b>Total facility fee</b>		\$3,310,000			\$0				\$3,347,712	
<b>Community service supervision fee</b>		\$53,000	0.6%		\$0	0.0%	\$38,042	0.4%	\$57,063	0.6%
<b>Victim witness fee (county)</b>		\$580,000	6.2%		\$0	0.0%	\$446,996	4.7%	\$589,654	6.2%
<b>Total special funds allocation</b>		\$3,998,000	42.6%		\$55,000	0.6%	\$3,024,353	31.8%	\$3,994,429	42.0%
<b>Total Revenues</b>		\$9,398,000	100.0%		\$9,510,545	100.0%	\$9,510,545	100.0%	\$9,510,545	100.0%

\* Restitution collection fund to general fund per proposal.

# Priority set for payment of court fees

By Sally Holewa, State Court Administrator

Most people are familiar with the concept of a fine as a penalty for criminal behavior, but many are not aware that besides a fine, there are a number of other fees that may be added to a sentence when someone is found guilty of a crime.

Because most payments are not enough to cover the entire financial obligation, the court has had to set a priority for how the payments are divided. In general, if a defendant has multiple cases, the payment is applied to the oldest case first. Within each case, the payment is divided using the priorities established by the Administrative Council. This priority list is:

- Indigent defense application fee
- Indigent defense/facility improvement fee
- Victim/Witness fee
- Restitution
- Fines/Forfeitures
- Court administrative fee
- Check collection fee
- Community service supervision fee
- Indigent defense recoupment
- City transfers and other county ordinance violations

Questions are sometimes raised as to why we don't have restitution as our first priority, or why some other fee isn't higher on the list. There are two main drivers behind how the priority list is set. The first has to do with the services the fees are funding and the second has to do with whether or not there are other sources of funding.

The indigent defense application fee and the indigent defense fee receive the highest priority because they are used to fund the Commission on Indigent Defense Services. The court system recognizes that to have a fair and just system, indigent defendants must have access to legal counsel. Part of the indigent defense fee also goes into a fund that is used to reimburse counties for maintenance and improvement of court facilities. Adequate facilities are necessary for the court to conduct hearings.

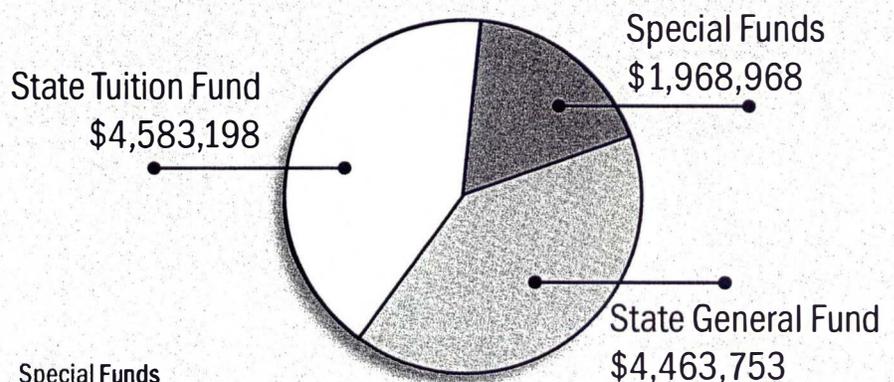
The victim/witness fee is used to fund victim and witness advocates and as funding for entities that provide direct services to victims. By placing this fee high in the priority list, the court

system recognizes the impact of crime on individuals and the need to provide someone who can assist victims and witnesses in understanding their rights, the sometimes complex and confusing legal procedures and terminology and to ensure that the victims get an opportunity to voice their thoughts about the case.

Restitution is fourth on the priority list. While restitution is an important part of any defendant's sentence, it is not first on the priority list because victims have the ability to pursue restitution through civil action and because victims of certain types of crimes can seek payment through the Crime Victims Reparations Fund.

The balance of the items on the list serve as a supplemental source for entities whose major funding comes from somewhere else and therefore are given a lower priority than some of the other fees.

## Revenues Collected Fiscal year ending 6/30/2010



### Special Funds

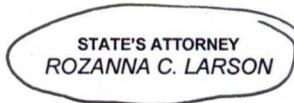
- Fund 279: Indigent Defense Facility Fee (SC) - \$547,624
- Fund 282: Indigent Defense Facility Fee - \$845,514
- Fund 282: Indigent Application Fee - \$90,620
- Fund 237: Civil Legal Service - \$333,252
- Fund 235: Displaced Homemakers - \$97,735
- Fund 268: Restitution Collection Assistance - \$26,135
- Fund 320: Community Service Supervision - \$28,088

The pie chart above indicates state revenues collected by the clerk of court offices for fiscal year ending June 20, 2010. Revenue collected by the courts is divided between the State General Fund, the State Tuition and Special Funds. A breakdown of those special funds is included in the chart.

# Office of State's Attorney

Rozanna Larson  
SB 2078 1-29-13

#9



DEPUTY STATE'S ATTORNEY  
KELLY A. DILLON

VICTIM/WITNESS COORDINATOR  
KAREN PFEIFER

WARD COUNTY  
Ward County Courthouse

PO Box 5005

315 3<sup>rd</sup> St SE

Minot, ND 58702

Telephone (701) 857-6480

Fax (701) 857-6580

ASSISTANT STATE'S ATTORNEYS  
CHRISTENE A. REIERSON  
SEAN B. KASSON  
ASHLEY E. BEALL  
JEREMY ENSRUD  
NIKOS C. BERKOWITZ

January 29, 2013

Honorable Senator Ray Holmberg, Chairman  
Senate Appropriations Committee  
North Dakota State Senate  
Bismarck, ND 58501

RE: Senate Bill 2078

This is to express my opposition in the proposed Senate Bill 2078. Specifically this bill eliminates the \$25 victim-witness fee that is assessed, at the Court's discretion, on all criminal matter of a Class B Misdemeanor level or higher.

Currently defendants can be assessed the following fees:

Indigent Defense Application Fee	\$ 25.00 (discretionary on the Court)
Indigent Defense/Court House Improvement fee	\$100.00 (discretionary on the Court)
Criminal Court Administration (Class B mis- Class AA fel)	\$125.00-900.00 (mandatory by Court)
Victim-Witness Fees	\$ 25.00 (discretionary on the Court)
Community Service Fees (if ordered)	\$ 25.00 (discretionary on the Court)
Check Fee	\$10.00 or 25% not to exceed \$1,000.00 (discretionary on the Court)

Re-imburement of Attorney Fees (upon judgment being entered)

Presumptive amounts \$260 for misdemeanors, \$455 for felonies (discretionary on the Court)

Currently, I'm proud to state that the Judges in Ward County and the Northwest District (which includes the Counties of Burke, Divide, Williams, McKenzie, Mountrail and Ward) nearly always assess all the costs allowed. I'm also proud to state that, at least in Ward County, the State's Attorney's Office, the Public Defender's Office, the Clerk of District Court, and the District Court Judges work together in collecting the fees that are assessed.

The \$25 victim-witness fee has not increased in at least 15 years. By statute this fee is only assessed if the County Commission, by resolution, authorizes the Courts to assess the fee. By statute these fees can only be used for certain purposes. They can be disbursed to 1) private, nonprofit domestic violence or sexual assault program, or 2) a victim and witness advocacy program of which the primary function is to provide direct services to victims of and witnesses to crime. In Ward County the monies collected are currently disbursed to the Domestic Violence Program.

Senate Bill 2078 proposes to eliminate discretionary fees currently in place, which include the indigent defense application fee, the indigent defense-courtthouse improvement fee, and the victim-witness fees. The bill proposes to institute one fee, and then that fee would be divided out according to formula to the current categories of funds.

The current Statute, NDCC 29-26-22 was enacted in 2003. Prior to that time, only administration fees and victim-witness fees were assessed to defendants along with any other appropriate sentence. One of the reasons for the change in the assessment of fees was the institution of Indigent Defense (Public Defenders) Offices. There needed to be a mechanism to generate funds for that agency. The amendments also instituted a fund that gave Counties the ability to apply for grants for Court related Courthouse improvements. However, when NDCC 29-26-22 was amended and enacted in 2003 it also eliminated from the statute the Court's discretion to assess the costs of prosecution. As with the costs of everything, the costs of prosecution have risen. This has been especially highlighted over the last two years in Ward County and the Northwest District. There has been an increase in witness costs (housing, mileage, meals), there has been an increase in blood draws for DUIs, medical records, certified court documents, bank records, the lists goes on. Currently, in Ward County, we have a quadruple homicide trial in session. The estimated cost of prosecution for that case is approximately \$30,000. For one witness necessary for a pretrial evidentiary hearing, the cost was \$2,448.02 which, we have been told is not reimbursable by the Attorney General's Office because the witness was an inmate. The cost to bring one witness back is estimated at \$6,000.00. It is anticipated that reimbursement for that cost will be denied as well, as that witness is a Federal inmate in California. I bring this to your attention, as obviously an extreme example, but to punctuate the fact that our society is continuing to be more mobile. As that continues, the witness costs increase, costs that should be assessed back to the defendants upon conviction, and not bore on a particular Agency, the residents of a particular County, or the tax payers of the State.

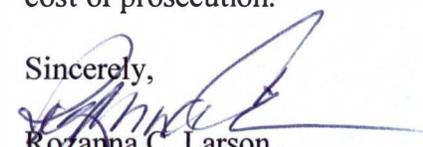
I, along with Dennis Johnson, the State's Attorney in McKenzie County, have formally requested that these costs be assessed to the defendants pursuant to NDCC 12-32-02(1)(a). The presiding judge of the Northwest District denied this request and provided a written analysis for that position. I have that email analysis to provide to you today. The bottom line, however, for the reason for the denial, was because the discretionary authority to assess the cost of prosecution was eliminated through the enactment of the amendments made to NDCC 29-26-22 in 2003.

I bring up this history, because now, in Senate Bill 2078 the amendments proposed would eliminate the two fees that are still ordered and collected in Ward County. Currently that amount is approximately \$41,000-\$44,000 annually actually collected. The proposed amendment would reduce the amount of monies remaining in Ward County by persons committing crimes in Ward County. That reduction amounts, at current rates, to approximately \$23,000 per biennium. That is a significant impact, and is only based upon current numbers. As I'm sure you have heard already during this session, the crime rates on the western half of the State has increased significantly. Even with the proposed increase in Administration Fees, the County would not be receiving more funds under the proposed formula, it would receive less than if the current \$25 victim-witness fee remained intact.

And so today, I respectfully opposed the proposed Senate Bill 2078 wherein it eliminates the victim-witness fee. I respectfully ask this committee to vote DO NOT PASS on the bill as it currently reads. I also respectfully ask that this committee refer the Bill to study for: 1) Which fees discretionary fees are currently actually being ordered in each County, 2) What that amount is, if the discretionary fees were ordered, 3) What amounts would each county be receiving if ordered and what that difference

would be under the current proposal, and 4) The re-institution of allowing the Courts to assess the cost of prosecution.

Sincerely,



Rozanna C. Larson

Ward County State's Attorney

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**From:** McLees, Bill [<mailto:BMcLees@ndcourts.gov>]

**Sent:** Monday, May 14, 2012 6:17 PM

**To:** Dennis Johnson

**Cc:** Roza Larson; Cresap, Todd; Hagar, Richard; Lee, Gary; Mattson, Doug; Portscheller, Connie; Nelson, David; Rustad, Josh

**Subject:** DUI blood tests - cost issue

**Mr. Johnson:**

Thank you for bringing N.D.C.C. 12.1-32-02(1)(a) to our attention. It appears that when the legislature was in the process of making its amendments to N.D.C.C. 29-26-22, it failed to consider that N.D.C.C. 12.1-32-02(1)(a) was still on the books.

Under the circumstances there appears to be an irreconcilable conflict between these two statutes. In line with what the North Dakota Supreme Court stated in City of Bismarck v. Fettig, 1999 ND 193, 601 N.W.2d 247, "If an irreconcilable conflict exists, the latest enactment will control or will be regarded as an exception to or as a qualification of the other."

Recognizing that the current version of N.D.C.C. 29-26-22 was enacted in 2003, and that N.D.C.C. 12.-32-02(1)(a) has been a part of North Dakota law for far longer than that, it is the consensus of the judges that N.D.C.C. 29-26-22 controls (since it was enacted subsequent to N.D.C.C. 12.1-32-02(1)(a), and cannot be seen as an exception or qualification to N.D.C.C. 29-26-22).

The Fettig court, citing Haff v. Hettich, 1999 ND 94, 593 N.W.2d 383, as well as N.D.C.C. 1-02-07, also noted that, "When there is a conflict between statutes, we construe specific statutes to control general statutes." We're satisfied that N.D.C.C. 29-26-22 is in fact a more specific provision than N.D.C.C. 12.1-32-02(1)(a), since the Court is *required* to assess a court administration fee in lieu of costs under N.D.C.C. 29-26-22, while it is within the Court's *discretion* whether to order a defendant to pay the reasonable costs of his/her prosecution under N.D.C.C. 12.1-32-02(1)(a).

Thank you.

Judge McLees

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**From:** Roza Larson [<mailto:Roza.Larson@co.ward.nd.us>]

**Sent:** Monday, May 14, 2012 3:31 PM

**To:** McLees, Bill

**Cc:** 'Dennis Johnson'; 'Marlyce Wilder'; 'Enget, Wade G.'; Sean Kasson; Ashley Beall; Kelly Dillon; Mark Flagstad; Bruce Christianson; Carroll Erickson; Jack Nybakken; Jerome Gruenberg; John Fjeldahl

**Subject:** FW: DUI's and Blood tests

Judge McLees,

On behalf of Ward County cases, I would request the same as below by Dennis Johnson, McKenzie County State's Attorney. I have read your response to Dennis Johnson. I would respectfully request the judges revisit their position pursuant to NDCC 12.1-32-02(1)(a) "payment of the reasonable costs of the person's prosecution". It would seem only fair, that if the Courts, Indigent defense etc can order defendants to pay certain amounts to recoup the costs incurred by defendants, that the County also be allowed the same opportunity. It would be my position that the opportunity is provided for in the above statute and is at the Court's discretion.

I do not currently have the amount that is paid, but if this is something the Courts will consider, I most certainly will get those costs.

Rozanna C. Larson  
State's Attorney

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**From:** Dennis Johnson [<mailto:Dennis@dakotalawdogs.com>]  
**Sent:** Sunday, May 13, 2012 9:34 AM  
**To:** [MarlyceW@co.williams.nd.us](mailto:MarlyceW@co.williams.nd.us); [wenget@pioneer.state.nd.us](mailto:wenget@pioneer.state.nd.us); Roza Larson  
**Subject:** FW: DUI's and Blood tests

Forgot to copy you in on this. If you want to send a similar request to the judges I would appreciate it very much.

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**From:** Dennis Johnson  
**Sent:** Sunday, May 13, 2012 9:32 AM  
**To:** Judge David Nelson ([DWNelson@ndcourts.gov](mailto:DWNelson@ndcourts.gov)); Judge Gary Lee ([GLee@ndcourts.gov](mailto:GLee@ndcourts.gov)); [BMcLees@ndcourts.com](mailto:BMcLees@ndcourts.com); Hagar, Richard; [JRustad@ndcourts.gov](mailto:JRustad@ndcourts.gov)  
**Cc:** 'Roger & Gail'; [dpatten@mckenziecountybank.com](mailto:dpatten@mckenziecountybank.com); [ronmyra@restel.net](mailto:ronmyra@restel.net); [rslawlar@ruggedwest.com](mailto:rslawlar@ruggedwest.com); [rcayko@midrivers.com](mailto:rcayko@midrivers.com); Linda Svihovic ([lsvihovec@co.mckenzie.nd.us](mailto:lsvihovec@co.mckenzie.nd.us)); Ari Johnson ([ari@dakotalawdogs.com](mailto:ari@dakotalawdogs.com)); Ron Rankin ([rrankin@co.mckenzie.nd.us](mailto:rrankin@co.mckenzie.nd.us)); Chief Slade Herfindahl ([svherfindahl@nd.gov](mailto:svherfindahl@nd.gov)); Ross Sundeen ([Ross@dakotalawdogs.com](mailto:Ross@dakotalawdogs.com))  
**Subject:** DUI's and Blood tests

Dear Judges,

I respectfully ask that you reconsider allowing assessment of DUI blood tests taxing costs DUI cases. These are just blood test cases in McKenzie County since January of 2012. \$3278.28 for 34 blood test DUI's. Actually the number is higher even for blood test DUI's but the hospital must have went through their books and are billing at one time all the DUI blood tests that were overlooked in the past, as we have received other DUI blood test bills from the hospital for this same time period. McKenzie County receives no reimbursement for this cost. Even looking at the 34 number – that is over \$12,000.00 a year!

Due to the oil field activity the numbers for DUI's are up in numbers. The County has had to hire additional officers, made allowance for additional prosecutorial services, and added Clerk of Court personnel to handle the load of increased crime in McKenzie County. Again no reimbursement for this expense to the County.

Many of the people being arrested make much more than you do as a judge. Assessing a blood test costs upon conviction would not render a hardship.

We are already assessing Court Improvement fees, indigent counsel fees, etc. Adding another \$96.42 per DUI is not going to work a hardship on any defendant and should it the court could always waive the fee.

Thank you for your consideration of this request.

SENATE BILL 2078  
Senate Appropriations Committee  
January 29<sup>th</sup>, 2013

Good Morning. My name is Robin Huseby, and I am Executive Director of the Commission on Legal Counsel for Indigents. I am here to testify on Bill 2078 as it may affect our agency budget.

Committee members, under the current law-§29-26-22, North Dakota Century Code- Fines and costs are split out in categories; the Court Administration Fee of \$100.00, the Community Service Supervision Fee of twenty-five dollars, restitution, and so forth. The Judges have a priority system in which these fees are to be collected. Under that priority list, the Indigent Defense Application fee, a \$25.00 fee, is to be collected first, unless waived. The next fee to be collected is the \$100.00 administration fee, and that is the fee that is split during the biennium between our agency and the Supreme Court Court Improvement Fund. This money is deposited to our indigent defense fund 282, and is a continuing appropriation.

Under the proposed changes to this collection method, the new bill calls for these fees (except the \$25.00 application fee), to be lumped together and split by percentage between the receiving entity.

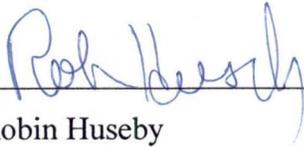
As a bit of a background, as I testified last week, our agency is funded by two sources; the general fund and a continuing appropriation consisting of the above referenced court administration fee, which is our fund 282, and the \$25.00 application fee. We have consistently, for years, been receiving about the same amount every biennium; approximately \$1.6 or 1.7 million dollars. We rely heavily on this fund as, in case of an emergency, such as this biennium, we have that fund to tide us over until the end of the biennium.

I am somewhat concerned what effect the passage of 2078 will have on the collection of the Court Administration Fee-the \$100.00-when that fee is lumped in with the rest of the statutory fees. Here is my concern. Currently, this one hundred dollar administrative fee is one of the top priority items for collection by the Judges. With 2078, it is just part of a larger fee. Will the Judges be more inclined to waive the large fee, hence eliminating the collection of the \$100.00 fee, if 2078 is passed? Let's take an example. Right now with a Class A Misdemeanor, for instance Possession of Drug Paraphernalia, the Judge can impose a \$100.00 court administration fee, amongst the other fees. That Judge knows that administration fee goes

directly to the Indigent Defense Fund and the Court Improvement Fund. With the new bill, the fee for a Class A Misdemeanor will be four hundred dollars, by statute. Will Judges be more inclined to waive that fee because it is higher and the defendant is indigent? I don't know the answer, and to me this is an experiment with a system that is working fine. I haven't heard any complaints about the collections of the fees as they now are collected, but I will defer to the Court personnel on that issue as I do not collect the fees.

I do not want to get into a situation where, if 2078 becomes law, an unintended effect of it's passage is a reduction of our indigent defense continuing appropriation consisting of the Court Administration Fee and the \$25.00 application fee.

Respectfully Submitted this 28<sup>th</sup> day of January, 2013



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Robin Huseby  
Executive Director  
P.O. Box 149  
Valley City, ND 58072  
701 845-8632  
rhuseby@nd.gov

Michelle Dresser-Ternes  
1-29-13  
SB 2078 #4

Testimony on SB 2078  
Senate Appropriations Committee  
January 29, 2013

Chairman Holmberg, members of the Senate Appropriations Committee, my name is Michelle Dresser-Ternes. I am a Victim Witness Coordinator with the Burleigh County State's Attorney's Office. I stand before you opposing Senate Bill 2078 as amended, consolidating the victim assistance fees into the various court fines and fees. I propose the victim assistance fees remain as they are or the language of the bill be changed to require any victim assistance fees collected by a county go only to that county.

I would like to start out by giving some information about our program and how we use the victim assistance fees. I am one of three Victim Witness Coordinators. Last year the Burleigh County Commissioners approved 100% of the victim assistance fees collected in Burleigh County to go directly to our program. In previous years, our program received half of these fees with a local nonprofit program receiving the other half. With all of the fees coming to our program in 2013, we were able to hire a third coordinator to accommodate our growing case load as well as start providing services to victims in Juvenile Court cases.

The numbers provided by the Court have changed several times with each revision continuing to result in a reduction of funds to the Burleigh County Victim Witness Program. With the addition of a third coordinator and service to victims in Juvenile Court cases, any reduction of funds to our program would be devastating. Burleigh County would have to make up for the lost funding or be faced with terminating the third coordinator position.

**BURLEIGH COUNTY VICTIM WITNESS PROGRAM**

	<b>2011</b>	<b>2012</b>	<b>2013 (proposed)</b>
	2 coordinators	2 coordinators	3 coordinators
<b>Total Budget</b>	\$115,413	\$116,972	\$163,117
<b>Victim Assistance Fees</b>	(\$45,680 x 50% =) \$22,840	(\$55,407 x 50% =) \$27,703.50	\$55,407 (using last year's number)
<b>District</b>	\$45,442.50	\$54,882	
<b>Municipal</b>	\$237.50	\$525	
<b>Case Load (District &amp; Municipal combined)</b>	727 victims	943 victims	72 victims (to date)
<b>Case Load (Juvenile – eff. 2-1-13)</b>	----	----	----