

Introduced by

Legislative Council

(Criminal Justice Committee)

1 A BILL for an Act to establish the commission on legal counsel for indigents for the purpose of  
2 providing indigent defense services; to amend and reenact section 27-20-49, subsection 2 of  
3 section 28-32-01, and subsections 1 and 4 of section 29-07-01.1 of the North Dakota Century  
4 Code, relating to the commission; to provide an appropriation; to provide for transition; and to  
5 provide an effective date.

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

7 **SECTION 1. Commission on legal counsel for indigents - Membership.**

8 1. The commission on legal counsel for indigents is established for the purpose of  
9 developing and monitoring a process for the delivery of state-funded legal counsel  
10 services for indigents which are required under the Constitution of North Dakota  
11 and the United States Constitution and any applicable statute or court rule. The  
12 commission shall provide indigent defense services for those individuals  
13 determined by the court to be eligible for and in need of those services.

14 2. The commission consists of the following members:

- 15 a. Two members appointed by the governor, one of whom must be appointed  
16 from a county with a population of not more than ten thousand.
- 17 b. Two members of the legislative assembly, one from each house, appointed by  
18 the chairman of the legislative council.
- 19 c. Two members appointed by the chief justice of the supreme court, one of  
20 whom must be appointed from a county with a population of not more than ten  
21 thousand.
- 22 d. One member appointed by the board of governors of the state bar association  
23 of North Dakota.

- 1           3. Appointing authorities shall make their initial appointments to the commission  
2           before August 1, 2005.
- 3           4. Initially, as determined by lot, one member will serve for one year, three members  
4           will serve for two years, and three members will serve for three years. At the  
5           expiration of the initial terms, the appointing authorities designated in subsection 2  
6           shall make appointments for three-year terms. A member may not serve more  
7           than two consecutive three-year terms plus any initial term of less than three years.
- 8           5. Individuals appointed to the commission should have experience in the defense of  
9           criminal cases or other cases in which appointed counsel services are required or  
10           should have demonstrated a commitment to quality representation in indigent  
11           defense matters. Membership of the commission may not include any individual,  
12           or the employee of that individual, who is actively serving as a judge, state's  
13           attorney, assistant state's attorney, contract counsel or public defender, or law  
14           enforcement officer.
- 15           6. A member of the commission is entitled to reimbursement for travel and expenses  
16           as provided by law for other state officers. If not otherwise employed by the state  
17           of North Dakota, a member is entitled to receive per diem compensation of  
18           sixty-two dollars and fifty cents for each day devoted to attending meetings or  
19           performing other duties relating to the official business of the commission.
- 20           7. One of the two appointees of the chief justice, as determined by the chief justice,  
21           shall convene the commission's first meeting no later than August 15, 2005. The  
22           members of the commission shall select the chairman of the commission within  
23           thirty days after the commission's first meeting and annually thereafter.

24           **SECTION 2. Commission responsibilities.**

- 25           1. The commission shall:
- 26           a. Develop standards governing the delivery of indigent defense services,  
27           including:
- 28           (1) Standards governing eligibility for indigent defense services;  
29           (2) Standards for maintaining and operating regional public defender  
30           offices if established;

- 1                   (3) Standards prescribing minimum experience, training, and other  
2                                   qualifications for contract counsel and public defenders;  
3                   (4) Standards for contract counsel and public defender caseloads;  
4                   (5) Standards for the evaluation of contract counsel and public defenders;  
5                   (6) Standards for independent, competent, and efficient representation of  
6                                   clients whose cases present conflicts of interest;  
7                   (7) Standards for the reimbursement of expenses incurred by contract  
8                                   counsel; and  
9                   (8) Other standards considered necessary and appropriate to ensure the  
10                                   delivery of adequate indigent defense services.  
11                   b. Establish and implement a process of contracting for legal counsel services  
12                                   for indigents.  
13                   c. Establish public defender offices in the regions of the state as the commission  
14                                   considers necessary and appropriate.  
15                   d. Establish a method for accurately tracking and monitoring caseloads of  
16                                   contract counsel and public defenders.  
17                   e. Approve and submit a biennial budget request to the office of the budget.  
18                   2. Upon the request of a county or city, the commission may agree to provide indigent  
19                                   defense services in the county or city for those cases in which the county or city is  
20                                   otherwise required to provide such services. Moneys received by the commission  
21                                   in accordance with an agreement under this subsection must be deposited in the  
22                                   indigent defense administration fund.  
23                   3. The commission shall adopt rules for the exercise of its authority under this chapter  
24                                   in a manner generally consistent with the notice and comment provisions of section  
25                                   28-32-11.

26                   **SECTION 3. Commission director - Responsibilities.**

- 27                   1. The commission shall appoint a director who must be chosen on the basis of  
28                                   training, experience, and other qualifications considered appropriate. The director  
29                                   must be an attorney licensed and eligible to practice law in this state at the time of  
30                                   appointment and at all times during service as director. The director may be  
31                                   removed for cause by a majority vote of commission members.

- 1           2. The director shall:
- 2           a. Assist the commission in developing standards for the delivery of adequate
- 3           indigent defense services;
- 4           b. Administer and coordinate delivery of indigent defense services and supervise
- 5           compliance with commission standards;
- 6           c. Recommend the establishment of public defender offices when considered
- 7           necessary and appropriate to the delivery of adequate indigent defense
- 8           services;
- 9           d. Conduct regular training programs for contract counsel and public defenders;
- 10          e. Subject to policies and procedures established by the commission, hire the
- 11          professional, technical, and support personnel, including attorneys to serve as
- 12          public defenders, considered reasonably necessary for the efficient delivery of
- 13          indigent defense services;
- 14          f. Prepare and submit to the commission a proposed biennial budget for the
- 15          provision of indigent defense services; an annual report containing pertinent
- 16          data on the operation, needs, and costs of the indigent defense contract
- 17          system and any established public defender offices; and any other information
- 18          as the commission may require;
- 19          g. Submit the annual report required under subdivision f to the legislative
- 20          council; and
- 21          h. Perform other duties as the commission may assign.

22           **SECTION 4. Records, files, and information - Accessibility - Confidentiality.** Any

23 file, record, or information regarding representation of a defendant under sections 1 through 4

24 of this Act which are attorney work-product or otherwise subject to any attorney-client privilege

25 are confidential and may not be disclosed except in accordance with a court order or in

26 response to applicable discovery rules. All other case-related records are exempt from

27 disclosure except as otherwise provided in rules adopted by the commission.

28           **SECTION 5. AMENDMENT.** Section 27-20-49 of the North Dakota Century Code is

29 amended and reenacted as follows:

30           **27-20-49. Costs and expenses for care of child.**

- 1           1. The following expenses are a charge upon the funds of the county upon  
2           certification thereof by the court:
- 3           a. The cost of medical and other examinations and treatment of a child ordered  
4           by the court.
- 5           b. The cost of care and support of a child committed by the court to the legal  
6           custody of a public agency other than an institution for delinquent children, or  
7           to a private agency or individual other than a parent.
- 8           c. The cost of any necessary transportation for medical and other examinations  
9           and treatment of a child ordered by the court unless the child is in the legal  
10          custody of a state agency.
- 11          2. The ~~supreme court~~ commission on legal counsel for indigents shall pay reasonable  
12          compensation for services and related expenses of counsel appointed by the court  
13          for a party and the supreme court shall pay reasonable compensation for a  
14          guardian ad litem. The attorney general shall pay the witness fees, mileage, and  
15          travel expense of witnesses incurred in the proceedings under this chapter in the  
16          amount and at the rate provided for in section 31-01-16. Expenses of the state  
17          include the cost of any necessary transportation for medical and other  
18          examinations and treatment of a child ordered by the court if the child is in the legal  
19          custody of a state agency in which case the cost must be reimbursed to the county  
20          by that state agency at the state mileage rate, excluding meals and lodging, plus  
21          twenty-nine cents per mile.
- 22          3. If, after due notice to the parents or other persons legally obligated to care for and  
23          support the child, and after affording them an opportunity to be heard, the court  
24          finds that they are financially able to pay all or part of the costs and expenses  
25          stated in subsection 1, and expenses payable by the supreme court under  
26          subsection 2, the court may order them to pay the same and prescribe the manner  
27          of payment. Unless otherwise ordered, payment shall be made to the clerk of the  
28          juvenile court for remittance to the person to whom compensation is due, or if the  
29          costs and expenses have been paid by the county or the state to the county  
30          treasurer of the county or to the state treasurer.

1           **SECTION 6. AMENDMENT.** Subsection 2 of section 28-32-01 of the North Dakota  
2 Century Code is amended and reenacted as follows:

- 3           2. "Administrative agency" or "agency" means each board, bureau, commission,  
4 department, or other administrative unit of the executive branch of state  
5 government, including one or more officers, employees, or other persons directly or  
6 indirectly purporting to act on behalf or under authority of the agency. An  
7 administrative unit located within or subordinate to an administrative agency must  
8 be treated as part of that agency to the extent it purports to exercise authority  
9 subject to this chapter. The term administrative agency does not include:
- 10          a. The office of management and budget except with respect to rules made  
11             under section 32-12.2-14, rules relating to conduct on the capitol grounds and  
12             in buildings located on the capitol grounds under section 54-21-18, rules  
13             relating to the classified service as authorized under section 54-44.3-07, and  
14             rules relating to state purchasing practices as required under section  
15             54-44.4-04.
  - 16          b. The adjutant general with respect to the division of emergency management.
  - 17          c. The council on the arts.
  - 18          d. The state auditor.
  - 19          e. The department of commerce with respect to the division of economic  
20             development and finance.
  - 21          f. The dairy promotion commission.
  - 22          g. The education factfinding commission.
  - 23          h. The educational technology council.
  - 24          i. The board of equalization.
  - 25          j. The board of higher education.
  - 26          k. The Indian affairs commission.
  - 27          l. The industrial commission with respect to the activities of the Bank of North  
28             Dakota, North Dakota housing finance agency, North Dakota municipal bond  
29             bank, North Dakota mill and elevator association, and North Dakota farm  
30             finance agency.

- 1 m. The department of corrections and rehabilitation except with respect to the  
2 activities of the division of adult services under chapter 54-23.4.
- 3 n. The pardon advisory board.
- 4 o. The parks and recreation department.
- 5 p. The parole board.
- 6 q. The state fair association.
- 7 r. The attorney general with respect to the state toxicologist.
- 8 s. The board of university and school lands except with respect to activities  
9 under chapter 47-30.1.
- 10 t. The administrative committee on veterans' affairs except with respect to rules  
11 relating to the supervision and government of the veterans' home and the  
12 implementation of programs or services provided by the veterans' home.
- 13 u. The industrial commission with respect to the lignite research fund except as  
14 required under section 57-61-01.5.
- 15 v. The attorney general with respect to guidelines adopted under section  
16 12.1-32-15 for the risk assessment of sexual offenders, the risk level review  
17 process, and public disclosure of information under section 12.1-32-15.
- 18 w. The commission on legal counsel for indigents.

19 **SECTION 7. AMENDMENT.** Subsection 1 of section 29-07-01.1 of the North Dakota  
20 Century Code is amended and reenacted as follows:

- 21 1. Lawyers appointed to represent indigent persons must be compensated at a  
22 reasonable rate to be determined by the ~~court~~ commission on legal counsel for  
23 indigents. Expenses necessary for the adequate defense of an indigent person,  
24 when approved by the judge, must be paid by the state if the action is prosecuted  
25 in district court and by the city in which the alleged offense took place if the action  
26 is prosecuted in municipal court. The city shall also pay the expenses in any  
27 appeal taken to district court from a judgment of conviction in municipal court  
28 pursuant to section 40-18-19. A defendant requesting representation by appointed  
29 counsel, or for whom appointed counsel without a request is considered  
30 appropriate by the court, shall submit an application for appointed defense  
31 services. For an application for appointed defense services in the district court, a

1 nonrefundable application fee of twenty-five dollars must be paid at the time the  
2 application is submitted. The district court may extend the time for payment of the  
3 fee or may waive or reduce the fee if the court determines the defendant is  
4 financially unable to pay all or part of the fee. If the application fee is not paid  
5 before disposition of the case, the fee amount must be added to the amount to be  
6 reimbursed under this section. Application fees collected under this subsection  
7 must be forwarded for deposit in the indigent defense administration fund  
8 established under subsection 4.

9 **SECTION 8. AMENDMENT.** Subsection 4 of section 29-07-01.1 of the North Dakota  
10 Century Code is amended and reenacted as follows:

11 4. The indigent defense administration fund is a special fund in the state treasury.  
12 The state treasurer shall deposit in the fund all application fees collected under  
13 subsection 1. All moneys in the indigent defense administration fund are  
14 appropriated on a continuing basis to the ~~judicial branch~~ commission on legal  
15 counsel for indigents to be used in the administration of the indigent defense  
16 system ~~and the collection of indigent defense costs and expenses required to be~~  
17 ~~reimbursed under this section.~~

18 **SECTION 9. APPROPRIATION.** There is appropriated out of any moneys in the  
19 general fund in the state treasury, not otherwise appropriated, the sum of \$1,135,285, or so  
20 much of the sum as may be necessary, to the commission on legal counsel for indigents for the  
21 purpose of establishing the commission, for the biennium beginning July 1, 2005, and ending  
22 June 30, 2007. Any moneys not expended by the supreme court for contract services by  
23 December 31, 2005, in accordance with section 10, are appropriated to the commission on  
24 legal counsel for indigents and must be transferred to the commission on January 1, 2006.

25 **SECTION 10. TRANSITION.** All contracts for indigent defense services awarded by  
26 the supreme court after June 30, 2005, must expire no later than December 31, 2005.

27 **SECTION 11. EFFECTIVE DATE.** Sections 5 and 7 of this Act become effective on  
28 January 1, 2006.