

Sixty-second  
Legislative Assembly  
of North Dakota

**ENGROSSED SENATE BILL NO. 2038**

Introduced by

Legislative Management

(Judicial Process Committee)

1 A BILL for an Act to amend and reenact section 25-03.3-09 of the North Dakota Century Code,  
2 relating to legal counsel in cases involving the commitment of sexually dangerous individuals; to  
3 provide an appropriation; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 25-03.3-09 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **25-03.3-09. Right to counsel - Waiver.**

- 8 1. Every respondent is entitled to legal counsel. Unless an appearance has been entered  
9 on behalf of the respondent, the court, within twenty-four hours from the time the  
10 petition was filed, exclusive of weekends or holidays, shall appoint counsel to  
11 represent the respondent. If a respondent retains counsel, the retained counsel  
12 immediately shall notify the court of that fact.
- 13 2. After consultation with counsel, the respondent may waive the right to counsel or the  
14 right to any hearing provided pursuant to this chapter by notifying the court in writing.  
15 The notification must clearly state the respondent's reasons for the waiver and the  
16 respondent's counsel shall separately certify that counsel has explained to the  
17 respondent the proceedings, the legal and factual issues, potential defenses, the  
18 burden of proof, and possible outcomes of the proceedings. No guardian, guardian ad  
19 litem, attorney, or other individual may waive the right to counsel on behalf of an  
20 individual with mental retardation.
- 21 3. If the court determines that the respondent is indigent, the court shall ~~appoint counsel~~  
22 ~~and order that appointed counsel be compensated by the county that is the~~  
23 ~~respondent's place of residence in a reasonable amount based upon time and~~  
24 ~~expenses provided by the commission on legal counsel for indigents.~~

- 1           4.   ~~The state's attorney of a county that has expended sums pursuant to subsection 3-~~  
2                   ~~may seek civil recovery of those sums from property of the respondent.~~  
3                   ~~Commencement of the action must occur within six years after the date the sums were-~~  
4                   ~~paid. After notice and hearing, the court may order an individual to reimburse the-~~  
5                   ~~county for expenditures made on that individual's behalf pursuant to this chapter.~~  
6           a.   Unless the court finds that there is no likelihood that the respondent is or will be  
7                   able to pay attorney's fees and expenses, the court, in its judgment or any order  
8                   following any proceeding under this chapter, shall order the respondent to  
9                   reimburse the presumed amount of indigent defense costs and expenses, as  
10                  determined by the commission on legal counsel for indigents, and shall notify the  
11                  respondent of the right to a hearing on the reimbursement amount.  
12           b.   If the petitioner or respondent requests a hearing within thirty days of receiving  
13                  notice under this subsection, the court shall schedule a hearing at which the  
14                  actual amount of attorney's fees and expenses must be shown.  
15           c.   In determining the amount of reimbursement and method of payment, the court  
16                  shall consider the financial resources of the respondent and the nature of the  
17                  burden that reimbursement of costs and expenses will impose.  
18           d.   A respondent who is required to reimburse indigent defense costs and expenses  
19                  and who is not willfully in default in that reimbursement may petition the court at  
20                  any time to waive reimbursement of all or any portion of the attorney's fees and  
21                  expenses. If the court is satisfied that reimbursement of the amount due will  
22                  impose undue hardship on the respondent or the respondent's immediate family,  
23                  the court may waive reimbursement of all or any portion of the amount due or  
24                  modify the method of payment.  
25           e.   If reimbursement has not been received, the attorney general, within six years of  
26                  the date indigent defense costs and expenses were paid on the respondent's  
27                  behalf, shall seek civil recovery of any amounts expended on the respondent's  
28                  behalf anytime the attorney general determines the respondent may have funds  
29                  to repay the state. A person against whom civil recovery is sought under this  
30                  subsection is entitled to all exemptions accorded to other judgment debtors. The  
31                  attorney general may contract with a private sector collection agency for

1                   assistance in seeking recovery of the funds. Before referring the matter to a  
2                   collection agency, the state's attorney shall notify the individual who is the subject  
3                   of the collection action.

4           **SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general  
5 fund in the state treasury, not otherwise appropriated, the sum of \$814,293, or so much of the  
6 sum as may be necessary, to the commission on legal counsel for indigents for the purpose of  
7 defraying the expenses of the commission on legal counsel for indigents in providing appointed  
8 counsel services in cases involving the commitment of sexually dangerous individuals under  
9 North Dakota Century Code chapter 25-03.3, for the biennium beginning July 1, 2011, and  
10 ending June 30, 2013. The commission on legal counsel for indigents is authorized one full-time  
11 equivalent position for the purposes of this section.

12           **SECTION 3. EFFECTIVE DATE.** This Act becomes effective on January 1, 2012.