

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 280

SENATE BILL NO. 2112

(Senator Traynor)

TRIBAL EXTRADITION PROCEEDINGS

AN ACT to provide for extradition proceedings regarding those subject to tribal arrest warrants; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Tribal arrest warrant" means any document issued by a court of a tribe in this state which authorizes a peace officer to take custody of a person.
2. "Tribe" means any of the federally recognized Indian nations, tribes, or bands in this state.

SECTION 2. Arrest with or without warrant.

1. A peace officer may arrest a person subject to a tribal arrest warrant if presented with the warrant and may arrest a person without a tribal arrest warrant upon probable cause to believe that the person is the subject of such a warrant. An arrest is authorized under this subsection only if the arrest warrant is issued for commission of a crime punishable as a misdemeanor under the applicable tribal ordinance or resolution.
2. The arrested person must be brought without unnecessary delay before the nearest available district judge.
3. The district judge shall issue an order continuing custody upon presentation of the tribal arrest warrant or, if the arrest is made without a warrant, upon testimony or affidavit showing probable cause to believe the person is the subject of such a warrant.

SECTION 3. Court appearance.

1. The district judge shall inform the person appearing under section 2 of this Act of the name of the tribe that has subjected the person to an arrest warrant, the basis for the arrest warrant, the right to assistance of counsel, and the right to require a judicial hearing before transfer of custody to the applicable tribal authority.
2. After being informed by the district judge of the effect of a waiver, the arrested person may waive the right to require a judicial hearing and consent to return to the applicable tribal authority by executing a written

waiver in the presence of the judge. If the waiver is executed, the judge shall issue an order to transfer custody under section 4 of this Act or, with the consent of the applicable tribal authority, authorize the voluntary return of the person to that authority.

3. If a hearing is not waived under subsection 2, the district judge shall hold a hearing within three days, excluding weekends and holidays, after the appearance. The arrested person and the state's attorney of the county in which the hearing is to be held must be informed of the time and place of the hearing. The judge shall release the person upon conditions that will reasonably assure availability of the person for the hearing or direct a law enforcement officer to maintain custody of the person until the time of the hearing. Following the hearing, the judge shall issue an order to transfer custody under section 4 of this Act unless the arrested person establishes by clear and convincing evidence that the arrested person is not the person identified in the warrant.
4. If the judge does not order transfer of custody, the judge shall order the arrested person to be released.

SECTION 4. Order to transfer custody.

1. A judicial order to transfer custody issued under section 3 of this Act must direct a law enforcement officer to take or retain custody of the person until an agent of the applicable tribal authority is available to take custody. If the agent has not taken custody within three days, excluding weekends and holidays, the judge may order the release of the person upon conditions that will assure the person's availability on a specified date within seven days, excluding weekends and holidays. If the agent has not taken custody within the time specified in the order, the person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant is issued.
2. The judge in the order transferring custody may authorize the voluntary return of the person with the consent of the applicable tribal authority.
3. An order to transfer custody is not appealable. An order denying transfer is appealable.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 9, 1997
Filed April 10, 1997

CHAPTER 281

HOUSE BILL NO. 1275

(Representative Mahoney)
(Senator Traynor)

ARRESTED PERSON APPEARANCE BEFORE MAGISTRATE

AN ACT to amend and reenact subsection 2 of section 29-30.3-04, subsection 1 of section 29-30.3-05, and subsection 1 of section 29-30.3-13 of the North Dakota Century Code, relating to the magistrate before which an arrested person may be brought.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 29-30.3-04 of the North Dakota Century Code is amended and reenacted as follows:

2. The arrested person must be brought ~~forthwith~~ before a the nearest available magistrate ~~in the county where arrest is made~~.

SECTION 2. AMENDMENT. Subsection 1 of section 29-30.3-05 of the North Dakota Century Code is amended and reenacted as follows:

1. A magistrate ~~in~~ for the county where arrest is sought shall authorize the issuance of an arrest warrant or other process to obtain the appearance of a person, if testimony or affidavit shows probable cause to believe:
 - a. The person is in this state; and
 - b. The person is the subject of another state's arrest warrant issued for:
 - (1) The commission of a crime punishable by death or imprisonment for a term exceeding one year;
 - (2) Escape from confinement; or
 - (3) Violation of any term of bail, probation, parole, or order arising out of a criminal proceeding.

SECTION 3. AMENDMENT. Subsection 1 of section 29-30.3-13 of the North Dakota Century Code is amended and reenacted as follows:

1. A person arrested under a governor's warrant must be brought ~~forthwith~~ before a the nearest available magistrate; ~~in the county where the person is arrested~~, who shall receive the warrant and inform the person of:
 - a. The name of the state demanding extradition;
 - b. The crime charged or other basis for the demand;

- c. The right to assistance of counsel; and
- d. The right to a judicial hearing under section 29-30.3-14.

Approved March 23, 1997
Filed March 24, 1997