

CHAPTER 357

JUDICIAL BRANCH
OF GOVERNMENTHOUSE BILL NO. 1605
(Richie)SERVICE OF PROCESS BY
UNITED STATES MARSHALS

AN ACT to authorize service of process by mail by federal marshals;
and declaring an emergency.

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

SECTION 1.) In addition to the methods provided in rule 4 of the North Dakota Rules of Civil Procedure, service of process may be made by registered or certified mail, but only by United States marshals engaged in the service of process of United States courts. Service by mail is made pursuant to this section by registered or certified mail, return receipt requested. Proof of service by mail must be made by filing an affidavit of mailing completed by the United States marshal, stating that a copy of the process, pleading, order of court, or other paper was deposited by the affiant, with postage prepaid, in the United States mail and directed to the party shown in the affidavit to be served at his last known post-office address, showing the date and place of depositing. A return receipt signed by the person to be served, and no other person, must be attached to the affidavit.

SECTION 2. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 3, 1979

CHAPTER 358

HOUSE BILL NO. 1441
(Representatives Kretschmar, Mushik, Richie)
(Senators Holmberg, Melland, Redlin)

JUDICIAL SALARIES

AN ACT to amend and reenact sections 27-02-02 and 27-05-03 of the North Dakota Century Code, relating to salaries of the judges of the supreme and district courts.

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

SECTION 1. AMENDMENT.) Section 27-02-02 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-02-02. SALARIES OF JUDGES OF SUPREME COURT.) Each judge of the supreme court shall receive an annual salary commencing July 1, 1979 of ~~thirty-six--thousand--eight~~ thirty-nine thousand two hundred dollars and commencing on July 1, 1980 an annual salary of forty-one thousand seven hundred dollars except that the chief justice of the supreme court shall receive an additional one thousand five hundred dollars per annum.

SECTION 2. AMENDMENT.) Section 27-05-03 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-05-03. SALARIES AND EXPENSES OF DISTRICT JUDGES.) Each district judge of this state shall receive an annual salary commencing July 1, 1979 of ~~thirty-four-thousand-five-hundred~~ thirty-six thousand seven hundred fifty dollars and commencing on July 1, 1980 of thirty-nine thousand one hundred dollars and his actual travel expenses, which shall include mileage and subsistence while engaged in the discharge of his official duties outside the county in which his chambers are located. Such salary and expenses shall be payable monthly in the manner provided by law.

Each district judge who has been appointed by the supreme court to act as presiding judge of a judicial district shall receive an additional one thousand two hundred dollars per annum.

Approved March 8, 1979

CHAPTER 359

HOUSE BILL NO. 1665
(Conmy, Stenehjelm)

DISTRICT COURT REPORTERS

AN ACT to amend and reenact sections 27-06-01, 27-06-03, 27-06-04, 27-06-05, 27-06-06, 27-06-07, and 27-06-08 of the North Dakota Century Code, relating to district court reporters.

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

SECTION 1. AMENDMENT.) Section 27-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-06-01. DISTRICT COURT REPORTER - APPOINTMENT, OATH, TERM, SUBSTITUTES, QUALIFICATIONS.) Each ~~judge--of--the~~ district ~~court--in--each--judicial--district,--whenever--in--his--judgment--it--will~~ judge ~~expedite--the--public--business,--may~~ shall appoint a ~~competent--person~~ qualified shorthand reporter to the office of court reporter ~~within his--district.~~ The order of appointment shall be filed in the office of the clerk and entered upon the records of the court in each county of the district. The person so appointed shall take and subscribe the oath required of other civil officers and shall file the same in the office of the secretary of state. ~~He~~ The reporter shall hold ~~his~~ office and discharge the duties thereof in person until the order ~~for--his~~ of appointment is revoked, or until another person is appointed to ~~such~~ the office. If ~~such~~ the reporter shall be incapacitated from acting, ~~such~~ the judge may appoint some ~~suitable--person~~ other qualified shorthand reporter to act ~~in--his~~ place, whose ~~minutes~~ notes, transcripts, and certificates shall have the same force and effect as though made by ~~such~~ the official reporter, but the certificates made by ~~such~~ the person shall be under oath. A qualified shorthand reporter shall be a person who is the holder of a registered professional reporter certificate issued by the national shorthand reporters association or an official shorthand reporter appointed on or before the effective date hereof.

SECTION 2. AMENDMENT.) Section 27-06-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-06-03. DUTIES OF DISTRICT COURT REPORTERS.) Each district court reporter shall attend the district court sessions ~~within--of~~

~~without--the--district~~ whenever the appointing judge ~~appointing him~~ shall so direct and shall take in shorthand all testimony given orally by the witnesses, all objections and rulings made and exceptions taken, any instructions given orally by the court, and all other proceedings at the hearing or trial not otherwise reduced to writing or as directed by the judge. District court reporters shall perform such other duties relating to the court as the appointing district-court judge may designate directs.

SECTION 3. AMENDMENT.) Section 27-06-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-06-04. FILING OF SHORTHAND ~~MINUTES~~ NOTES TAKEN BY DISTRICT COURT REPORTERS.) The original shorthand ~~minutes~~ notes taken by a district court reporter, together with an endorsement thereon in longhand over the signature of the reporter giving the title of the action and stating the contents, ~~time date~~, and place of taking, shall be filed in every case at the conclusion of the trial, or as soon thereafter as practicable, in the office of the clerk of the district court of the county in which the action is pending. ~~Such minutes,--for~~ For a reasonable period of time, the reporter's shorthand notes may be withdrawn by such reporter from the clerk's office of such clerk by the reporter for the purpose of transcribing them transcription.

SECTION 4. AMENDMENT.) Section 27-06-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-06-05. TRANSCRIPT PREPARED BY COURT REPORTER.) The court reporter of any district court in which a criminal or civil action or proceeding has been tried shall prepare a transcript of the original shorthand ~~minutes~~ notes of ~~such~~ the action or proceeding, or of any part thereof, whenever he is requested to do so by any party thereto and upon payment of ~~his~~ the fees as provided by law. ~~Such~~ The transcript shall be typewritten ~~or prepared in longhand~~ and shall be delivered to the party requesting it. ~~A transcript of--the original--shorthand--minutes--of--a--criminal--action--or--proceeding--tried in--such--court--or--of--any--part--thereof--similarly--shall--be--prepared--by such--reporter--whenever--the--judge--of--such--court--shall--order--a transcript--to--be--made--at--the--expense--of--the--county--~~

SECTION 5. AMENDMENT.) Section 27-06-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-06-06. TRANSCRIPT IN CRIMINAL ACTION PREPARED AT EXPENSE OF COUNTY - FILING AND USE OF TRANSCRIPT.) A judge of a district court in which a criminal action or proceeding has been tried, on his own motion or on the application of the defendant or the state's attorney of the county, may order a transcript of the original shorthand ~~minutes~~ notes of ~~such~~ the action or proceeding, or of any part thereof, to be made by the reporter at the expense of the county expense whenever in his judgment there is reasonable cause therefor. Such transcript, when prepared, shall consist of one copy to be filed in the office of the clerk of such court, and--shall--be

~~available--alike--to--either--party--to--such--action--or--proceeding~~ one copy for each party separately represented, and, if parole or probation be granted, one copy to the state parole and probation department. For the preparation of such transcript, the court reporter shall receive compensation in accordance with the provisions of section 27-06-08.

SECTION 6. AMENDMENT.) Section 27-06-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-06-07. CERTIFICATION OF TRANSCRIPT.) Each transcript prepared by a district court reporter shall be certified by the reporter ~~to--the--effect--that--it--is--a--correct--transcript--of--his--original--shorthand--minutes--and--a--full--true--and--complete--statement--of--the--testimony--and--other--proceedings--which--it--purports--to--contain--~~ in the following form:

CERTIFICATE OF COURT REPORTER

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF -----)

I, -----, a duly appointed official court reporter,

DO HEREBY CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place indicated.

I DO HEREBY FURTHER CERTIFY that the foregoing and attached ----- typewritten pages contain an accurate transcript of my shorthand notes then and there taken.

Dated at -----, North Dakota, this ----- day of -----, 19---.

Official Court Reporter

If the person preparing such the transcript has ceased to hold his office as court reporter ~~of--the--court,~~ he--must--make--such the certificate must be made under oath.

SECTION 7. AMENDMENT.) Section 27-06-08 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-06-08. FEES FOR TRANSCRIPTS.) For the preparation of a transcript, a court reporter shall be entitled to receive compensation at the rate of one dollar ten cents per page for the original, thirty-five cents per page for the first copy, and fifteen cents per page for each additional copy. A page shall consist of not less than twenty-five lines written on paper at least eight and one-half inches by eleven inches in size, prepared for binding on

the left side, with margins of not more than one and three-fourths inch on the left nor three-eighths inch on the right. Type shall be standard pica with ten letters to the inch. Questions and answers shall each begin a new line. Indentations for speakers or paragraphs shall not be more than ten spaces from the left margin. Pages shall be numbered consecutively. Transcripts shall be indexed as to witnesses and exhibits. ~~Such~~ The reporter's compensation shall be paid by the party requesting the transcript or by the county chargeable with the costs of the action, when the transcript is ordered prepared, by the judge, at such county's expense.

Approved March 7, 1979

CHAPTER 360

HOUSE BILL NO. 1460
(Conmy, Dotzenrod, Kelly)

DISTRICT COURT REPORTER AND JUVENILE SUPERVISOR COMPENSATION

AN ACT to amend and reenact section 27-06-02 and subsection 2 of section 27-20-05 of the North Dakota Century Code, relating to salary and expenses of court reporters and juvenile supervisors.

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

SECTION 1. AMENDMENT.) Section 27-06-02 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-06-02. SALARY AND EXPENSES OF COURT REPORTER.) Each court reporter shall receive a an annual salary commencing July 1, 1979, not to exceed ~~nineteen~~ twenty thousand ~~five~~ eight hundred dollars per-annum and commencing on July 1, 1980, an annual salary not to exceed twenty-two thousand one hundred dollars, payable in equal monthly installments by the counties constituting the judicial district in which such reporter is employed. Such salary shall be set by each district court judge involved and shall be prorated among the respective counties of each judicial district on the basis of the ratio of the population of each county to the total population of the judicial district according to the last federal decennial census. The presiding judge of each judicial district, on the first day of January of each year, or as soon thereafter as may be, shall apportion the amount of such salary to be paid by each county in his district on the basis aforesaid, and the county auditors of the respective counties in such judicial district shall issue to the order of such court reporter a warrant to the amount shown to be due by such apportionment. As reimbursement for expenses incurred in the performance of official duties outside of the county where the district court chambers are situated, the court reporter shall receive expense allowances in accordance with the provisions of section 44-08-04. Such sums shall be paid monthly by the county wherein such court reporter is attending to such official duties, when approved by the board of county commissioners. Claims for transportation expenses shall not exceed amounts provided by section 54-06-09 and shall be in itemized form showing the mileage

traveled, the days when and how traveled, and the purposes thereof, and verified by affidavit. No claim for living expenses or transportation expenses shall be approved for payment to a court reporter by the board of county commissioners unless such claim shall have been first approved by the district judge.

SECTION 2. AMENDMENT.) Subsection 2 of section 27-20-05 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Each juvenile supervisor shall receive as full compensation for his services a an annual salary as may be fixed from time to time by the judge who appointed him, or by his successor. Such salary shall not exceed ~~twenty-one~~ twenty-two thousand four hundred dollars per-annum and commencing on July 1, 1980, an annual salary not to exceed twenty-three thousand eight hundred dollars. In addition, the juvenile supervisor shall be paid reasonable travel expenses for mileage and subsistence necessarily incurred in the discharge of his duties, in accordance with the amount allowed to county officials.

Approved March 7, 1979

CHAPTER 361

HOUSE BILL NO. 1412
(Freborg)

ESTATE AND GUARDIANSHIP PETITION
FILING FEES

AN ACT to amend and reenact section 27-07-40 of the North Dakota Century Code, relating to the fees for filing estate and guardianship petitions.

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

SECTION 1. AMENDMENT.) Section 27-07-40 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07-40. FILING FEES FOR ESTATES AND GUARDIANSHIPS - AMOUNT - WHEN AND WHERE TO BE PAID.) Before a petition for letters testamentary, of administration, of guardianship, of proceedings in heirship, or an application in joint tenancy to determine estate tax, is filed in a county court of this state, the petitioner, or someone on his behalf, shall pay a filing fee to ~~said~~ the county court for deposit by that office into the county treasury of the county in which the court is located ~~which--shall--be~~ in the ~~sum~~ amount of ~~fifteen~~ twenty dollars, except that the filing fee for applications in joint tenancy to determine estate tax shall be in the ~~sum~~ amount of ten dollars ~~and--such.~~ The filing fee for applications in joint tenancy to determine estate tax shall not be subject to the provisions of section 27-07-41.

Approved March 18, 1979

CHAPTER 362

HOUSE BILL NO. 1399
(Conmy)

SALARIES OF JUDGES OF COUNTY COURTS OF INCREASED JURISDICTION

AN ACT to amend and reenact section 27-08-08 of the North Dakota Century Code, relating to the salaries of judges of county courts of increased jurisdiction.

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

SECTION 1. AMENDMENT.) Section 27-08-08 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08-08. SALARIES OF JUDGES OF COUNTY COURTS OF INCREASED JURISDICTION - AMOUNT AND PAYMENT.) A county judge of a county court of this state having increased jurisdiction shall receive the following salary: twenty-one thousand dollars in counties having a population not exceeding ten thousand inhabitants; twenty-one thousand five hundred dollars in counties having a population exceeding ten thousand inhabitants but not exceeding eighteen thousand inhabitants; twenty-two thousand eight hundred dollars in counties having a population exceeding eighteen thousand inhabitants but not exceeding forty thousand inhabitants; and twenty-seven thousand six hundred dollars in counties having a population exceeding forty thousand inhabitants. Such salary shall be payable by the county in equal monthly installments and shall be full remuneration for all official duties, including all fees collected for official acts as judge of the county court, except fees charged for performing marriage ceremonies. All fees collected for official acts as judge of the county court, except fees charged for performing marriage ceremonies, shall be deposited by the court into the county treasury of the county in which the court is located. On July 1, 1979, the salary of each judge of a county court of increased jurisdiction, or interim associate district judge in the event House Bill 1066 of the forty-sixth legislative assembly becomes law, shall be increased six and one-half percent over the total base salary and discretionary increase actually being paid such judge as of June 30, 1979. On July 1, 1980, the salary of each judge of a county court of increased jurisdiction, or interim associate district judge in the event House Bill 1066 of the forty-sixth legislative assembly becomes law, shall be increased six and one-half percent over the total base salary and discretionary increase actually being paid such judge as of June 30, 1980.

Approved April 3, 1979

CHAPTER 363

HOUSE BILL NO. 1462
(Berg)

SMALL CLAIMS COURT HEARINGS AND JUDGMENTS

AN ACT to amend and reenact sections 27-08.1-03 and 27-08.1-06 of the North Dakota Century Code, relating to informal hearings before the small claims court and the examination of judgment debtors, and execution of judgments.

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

SECTION 1. AMENDMENT.) Section 27-08.1-03 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08.1-03. INFORMAL HEARING - ANSWER AND COUNTERCLAIM - FILING AND SERVICE FEES - EXAMINATION OF DEBTOR.) No formal pleadings other than the claim affidavit and order for appearance shall be required, and the hearing and disposition of actions shall be informal. No court reporter shall be required to be present to take the testimony unless arranged for and paid for by one of the parties to the action. The defendant may file an answer, and file a claim affidavit setting forth any new matter constituting a counterclaim, not to exceed five hundred dollars where the action was commenced in the office of the county justice, and one thousand dollars where the action was commenced in an office of the county court with increased jurisdiction, which shall be delivered to the plaintiff in person, not later than forty-eight hours before the hearing set for the appearance of the defendant. The compulsory counterclaim rule shall not apply to counterclaims in excess of five hundred dollars in county justice court, and one thousand dollars in county court with increased jurisdiction. At the hearing, the plaintiff and the defendant may appear without counsel. The court will conduct the proceedings and may make its own inquiry before, during, or after the hearing. After the court has found that money is owing by any party to the proceeding, the court may, in the presence of the prevailing party, inquire of the debtor as to plans for payment of the debt. The court may examine the debtor concerning the property owned by the debtor, at the hearing, as would be made under the provisions of chapter 28-25. The examination may be made without first having issued an execution

against the property of the debtor and without further notice as otherwise provided in chapter 28-25. A trial by jury shall not be allowed in small claims court. A fee of two dollars shall be charged for filing the claim affidavit, or counterclaim affidavit, plus one dollar for each defendant served.

SECTION 2. AMENDMENT.) Section 27-08.1-06 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08.1-06. JUDGMENT UNSATISFIED - DOCKETING - EXECUTION.) If the defendant fails to pay the judgment rendered by the court within twenty days after notice of entry has been filed, the judge of the court, may issue an execution to the county sheriff as if issued by the clerk of the district court under the provisions of chapter 28-21, and the execution shall invoke all the powers of the sheriff in the same manner as an execution of the judgment under chapter 28-21, or upon application of the prevailing party, shall certify an abstract of the judgment to the district court, along with an affidavit of identity signed by the judgment creditor. The abstract may be filed with the clerk of the district court of the county in which the judgment was rendered without payment of a filing fee, and the clerk, thereupon, must enter the judgment in the judgment book and upon the judgment docket. From the time of such the docketing, it becomes a judgment of such the district court for the purpose of execution and a lien upon real property owned by the debtor in the same manner as an original judgment of the district court. A certified transcript of the docket of the judgment may be filed and the judgment docketed accordingly in any other county with the same effect in every respect as if the judgment had been rendered in the district court where such the judgment is filed.

Approved March 15, 1979

CHAPTER 364

SENATE BILL NO. 2159

(Committee on Judiciary)

(At the request of the Social Service Board)

CUSTODY OF MINORS

AN ACT to amend and reenact subsection 1 of section 27-20-13, subsection 2 of section 27-20-37, and section 50-25.1-08 of the North Dakota Century Code, relating to informal adjustment of minors, to taking minors into custody, to the modification or vacation of orders of the juvenile court, and to the appointment of guardians ad litem.

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

SECTION 1. AMENDMENT.) Subsection 1 of section 27-20-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A child may be taken into custody:
 - a. Pursuant to an order of the court under this chapter;
 - b. Pursuant to the laws of arrest;
 - c. By a law enforcement officer or a juvenile supervisor, or by order of the juvenile supervisor made pursuant to subsection 1 (h) of section 27-20-06, if there are reasonable grounds to believe (1) that the child is suffering from illness or injury or is in immediate danger from his surroundings, and that his removal is necessary, or (2) that the child has run away from his parents, guardian, or other custodian.

An order of the juvenile supervisor made pursuant to this subsection shall be reduced to writing within twenty-four hours of its issuance.

SECTION 2. AMENDMENT.) Subsection 2 of section 27-20-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Except an order committing a delinquent or unruly child to the state industrial school, an order terminating parental rights, or an order of dismissal, an order of the court may also be changed, modified, or vacated on the ground that changed circumstances so require in the best interest of the child. An order terminating parental rights and the parent and child relationship may be vacated by the court upon motion of the parent if the child is not on placement for adoption and the person having custody of the child consents in writing to the vacation of the decree. An order granting probation to a child found to be delinquent or unruly may be revoked on the ground that the conditions of probation have not been observed.

SECTION 3. AMENDMENT.) Section 50-25.1-08 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-08. GUARDIAN AD LITEM.) The court, in every case involving an abused or neglected child which results in a judicial proceeding ~~or--proceedings--for--informal--adjustment--under--27-20-10,~~ shall appoint a guardian ad litem for the child in those proceedings.

Approved April 7, 1979

CHAPTER 365

SENATE BILL NO. 2394
(Farrington, Sands)

ACCESS TO JUVENILE COURT RECORDS

AN ACT to create and enact a new subsection to section 27-20-51 of the North Dakota Century Code, relating to the confidentiality of juvenile court records and files and the inspection of those files by certain school officials.

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

SECTION 1.) A new subsection to section 27-20-51 of the North Dakota Century Code is hereby created and enacted to read as follows:

Upon leave of the court, the principal of any public or private school which is a member of the North Dakota high school activities association, or the superintendent of any school district which has one or more schools involved in the association, but only to the extent necessary to enforce the rules and regulations of the North Dakota high school activities association.

Approved March 15, 1979

CHAPTER 366

HOUSE BILL NO. 1055
(Legislative Council)
(Interim Committee on Criminal Justice System)

DISPOSITION OF JUVENILE COURT RECORDS

AN ACT to amend and reenact section 27-20-54 of the North Dakota Century Code, relating to the sealing and disposal of juvenile records; and to repeal section 27-20-54.1 of the North Dakota Century Code, relating to the destruction of juvenile records.

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

SECTION 1. AMENDMENT.) Section 27-20-54 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-54. SEALING AND DISPOSAL OF JUVENILE RECORDS AND FILES - WITH AND WITHOUT HEARINGS - FINDINGS NECESSARY - NOTICE - REOPENING RECORDS.)

1. The court shall, upon its own motion, shall order the sealing of the its files and records of ~~all children that~~ every child who were subjects was the subject of proceedings a proceeding as a delinquent child or an unruly child under sections ~~27-20-30~~ 27-20-10, 27-20-31, and or 27-20-32, or under juvenile court proceedings commenced before July 1, 1969, including records kept pursuant to sections 27-20-52, 27-20-53, and 12-46-15, when if the court finds any of the following:

a. That ~~the child is twenty-one years of age.~~

~~b. That~~ two years have passed elapsed since the expiration of any informal adjustment or final order of disposition or and the final discharge of the child; or

~~e. b.~~ That the petition against the child has been dismissed for lack of jurisdiction or failure of proof.

~~2. On application of a person who has been adjudicated deprived, delinquent, or unruly, and after a hearing, the~~

court--may--order--the--sealing--of--files--and--records--in--the
proceedings--including--those--specified--in--sections
27-20-52--and--27-20-53--if--the--court--finds--any--of--the
following:

a--Since--the--final--discharge--the--applicant--has--not--been
convicted--of--a--felony--or--of--a--misdemeanor--involving
moral--turpitude--or--adjudicated--a--delinquent--or--unruly
child--and--no--proceeding--is--pending--seeking--conviction
or--adjudication--

b--The--applicant--has--been--rehabilitated--or--there--is--a
convincing--likelihood--of--no--future--offenses--

c--Supervision--of--a--deprived--child--is--no--longer--necessary
or--that--the--child--has--been--adopted--

d--The--findings--or--order--of--disposition--have--been
reversed--on--appeal--

e--The--existence--of--the--record--is--not--in--the--best
interest--of--the--child--

3--On--application--of--a--child--or--his--parent--or--guardian--and
after--a--hearing--the--court--may--order--the--sealing--of--files
and--records--kept--by--law--enforcement--agencies--or--by--any
representative--of--the--state--or--a--state--agency--if--the
court--finds--any--of--the--following:

a--The--child--was--not--referred--to--the--juvenile--court--

b--The--child--was--subject--to--informal--law--enforcement
disposition--

c--The--child--was--released--to--his--parents--

d--There--is--a--convincing--likelihood--of--no--future--offenses
and--the--existence--of--the--records--is--not--in--the--best
interest--of--the--child--

4--For--purposes--of--this--section--records--are--defined--as--all
documents--relating--to--the--apprehension--detention--
adjudication--or--disposition--of--a--child--

2. When two years have elapsed since the expiration of any informal adjustment or final order of disposition and final discharge of a child whose files and records are subject to an order of sealing under subsection 1, the court, on application of the child, or his parent or guardian, by order may direct the destruction of all orders, records, and papers, and the disposal of all exhibits, relating to the child and contained in the files of the juvenile supervisor and the court, if the court finds, after a hearing, that since the expiration of any

informal adjustment or final order of disposition and the final discharge of the child, the person who was the subject of the informal adjustment or final order of disposition has not been convicted of a felony, or of a misdemeanor involving moral turpitude, or adjudicated a delinquent child or unruly child, and no proceeding is pending seeking his conviction or adjudication.

5- 3. Reasonable notice of the hearing under subsection 2 shall be given to:

- a. The state's attorney of the county.
- b. The authority granting the discharge if the final discharge was from an institution or from parole.
- c. The law enforcement agencies or any representative of the state or state agency having custody of the files and records specified in sections 27-20-52, 27-20-53, and 12-46-15, and which are included in the application or motion.

4. When ten years have elapsed since the expiration of any informal adjustment or final order of disposition and the final discharge of a child whose files and records are subject to an order of sealing under subsection 1, the court on its own motion, unless earlier ordered by the court under subsection 2, shall order the destruction of all orders, records, and papers, and the disposal of all exhibits, relating to the child and contained in the files of the juvenile supervisor and the court.

6- 5. Upon entry of ~~the~~ an order under subsection 2 or 4, the proceeding shall be treated as if it never occurred. All index references shall be deleted, and upon inquiry in any matter the ~~person~~ child, the court, law enforcement officers, and representatives of state agencies shall properly reply that no record exists with respect to the ~~person~~ child. Copies of the order shall be sent to each agency or official therein named. ~~Inspection--of--the sealed--files--and--records--thereafter--may--be--permitted--by court--order--upon--petition--by--the--subject--of--the--records and--only--by--these--persons--named--in--the--order.~~ Each law enforcement agency and law enforcement officer, upon receipt of a copy of the order, shall destroy all files, records, and references to the child pertaining to his apprehension, detention, and referral to the juvenile court and any record of disposition made by the juvenile court.

6. The juvenile court may retain documents and records for the purpose of administration, planning, research, and statistical information provided all names have been expunged from documents and records subject to an order under subsection 2 or 4.

SECTION 2. REPEAL.) Section 27-20-54.1 of the 1977 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 7, 1979

CHAPTER 367

SENATE BILL NO. 2072
(Legislative Council)
(Interim Committee on Judicial System)

APPOINTMENT OF TEMPORARY JUDGES

AN ACT to create and enact chapter 27-26 of the North Dakota Century Code, relating to the appointment of temporary judges; and declaring an emergency.

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

* SECTION 1.) Chapter 27-26 of the North Dakota Century Code is hereby created and enacted to read as follows:

27-26-01. APPOINTMENT OF ELIGIBLE PERSON TO TEMPORARY JUDGESHIP.)

1. The supreme court may appoint any eligible person to serve as temporary judge in any court other than the supreme court, whenever the supreme court determines that the appointment is reasonably necessary and will promote the more efficient administration of justice. A person is eligible for appointment if the person is a resident of this state and has been engaged in the active practice of law in this state for a period of at least three years next preceding the appointment.
2. An appointment under this section shall be made by order of the supreme court. The supreme court shall provide, to the extent it deems necessary or desirable, rules and regulations for appointments under this section. No appointment made pursuant to this chapter shall be for a duration longer than thirty calendar days.
3. An appointment under this section shall not become effective until the appointee subscribes and files in the office of the secretary of state an oath or affirmation substantially as follows:

"I do solemnly swear (or affirm) that I will support the constitutions of the United States and the state of North Dakota, and that I will faithfully discharge

* NOTE: This chapter is codified as North Dakota Century Code Chapter 27-24.

the duties of the office of judge of the state of North Dakota to the best of my ability."

27-26-02. TRANSFER, CHALLENGE, DISQUALIFICATION, AND SUPERVISION OF PERSON APPOINTED.)

1. A temporary judge appointed as provided in this chapter to serve in any court, other than the supreme court, in any county or judicial district may, at any time while serving under the appointment, be transferred and assigned by the supreme court to serve as temporary judge in any one or more other counties or judicial districts during the term of the appointment.
2. Each temporary judge appointed and qualified as provided in section 27-26-01 has, in the city, county, or judicial district assigned, all the judicial powers, duties, jurisdiction and authority, while serving under the appointment, of a regularly elected or appointed judge of the appropriate court.
3. The eligibility, appointment, or qualification of an appointee under section 27-26-01, or the appointee's right to hold the position of temporary judge in any particular city, county, or judicial district while serving under the appointment, is subject to challenge only in a direct proceeding instituted for that purpose as provided by law. The proceeding may be instituted in the supreme court if it consents to take original jurisdiction thereof.
4. A temporary judge appointed as provided in section 27-26-01 is subject to demand for change of judge as provided in section 29-15-21 of the North Dakota Century Code.
5. A temporary judge appointed as provided in section 27-26-01 or assigned as provided in subsection 1 of this section to a district court with one or more regularly elected or appointed and qualified judges on active duty shall be subject to the directions of the regular presiding judge of the district court in respect to the assignment of cases and the general administration of the business of the court. A temporary judge assigned to any other court shall be under the supervision of the supreme court.

27-26-03. EXTENSION AND TERMINATION OF APPOINTMENT OF TEMPORARY JUDGE - ELIGIBILITY TO APPEAR AS AN ATTORNEY.)

1. It is the duty of a temporary judge appointed as provided in section 27-26-01 to hear, decide, and dispose of all cases and matters submitted to the judge as promptly as the nature of the questions involved will permit. The powers, jurisdiction, and judicial authority of the

temporary judge in respect to any case or matter tried or heard while serving under the appointment shall continue beyond the expiration of the appointment so far as may be necessary to:

- a. Decide and dispose of any case or matter on trial or held under advisement.
 - b. Hear and decide any motion for a new trial or for a judgment notwithstanding the verdict, or objections to any cost bill, that may be filed in the case.
 - c. Settle a transcript for appeal and grant extensions of time therefor.
2. The supreme court at any time by order may terminate the term of appointment of a temporary judge as of a date specified in the order, but termination does not affect the validity of any judgment, decree, order or other action of the temporary judge before the effective date of the termination.
 3. A temporary judge appointed as provided in section 27-26-01 is not eligible to appear as attorney in the court to which the judge was appointed in any case tried by a jury selected from the same jury panel which was in existence during the time which he served as temporary judge.

27-26-04. COMPENSATION AND EXPENSES OF PERSONS APPOINTED TEMPORARY JUDGE.)

1. A temporary judge appointed as provided in section 27-26-01 shall receive as compensation for each day of service in the performance of duties under the appointment an amount equal to five percent of the gross monthly salary of a regularly elected or appointed judge of the court in which the temporary judge is to serve, or one-half of that daily compensation for services of one-half day or less. The daily compensation of any temporary judge who is receiving retirement benefits from a retirement program funded in all or part by the state, excluding federal social security benefits, shall be reduced by an amount equal to five percent of the gross monthly benefits received from any such retirement program. The compensation shall be paid upon the certificate of the temporary judge that the services were performed for the number of days shown in the certificate, and shall be paid in the same manner as the salaries of the regularly elected or appointed judges are paid.
2. A temporary judge appointed as provided in section 27-26-01 or assigned as provided in section 27-26-02 to serve outside the county in which the judge resides or

maintains an office shall receive, in addition to daily compensation, reimbursement for travel expenses necessarily incurred in the performance of duties as temporary judge. The expenses shall be reimbursed upon the certification by the temporary judge that the expenses were actually incurred, in the same manner as like expenses of regularly elected or appointed judges are paid.

SECTION 2. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved April 7, 1979