

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 345

SENATE BILL NO. 2495
(Tennefos, Holmberg)

FOREIGN PEACE OFFICERS

AN ACT to create and enact a new section to chapter 29-06 of the North Dakota Century Code, relating to foreign peace officers providing transportation for law enforcement purposes; and to amend and reenact sections 29-06-05, 29-06-06, and 29-06-07 of the North Dakota Century Code, relating to foreign officers in fresh pursuit; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-06-05 of the North Dakota Century Code is amended and reenacted as follows:

29-06-05. Foreign peace officer in fresh pursuit may arrest in state. Any member of a duly organized state, county, or municipal peace law enforcement unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit of a person in order to arrest ~~him~~ the person on the ground that ~~he~~ the person is believed to have committed a felony, misdemeanor, or traffic violation in such other state, shall have the same authority to arrest and hold such person in custody as has any member of any duly organized state, county, or municipal peace law enforcement unit of this state to arrest and hold in custody a person on the ground that ~~he~~ the person is believed to have committed a felony, misdemeanor, or traffic violation in this state.

SECTION 2. A new section to chapter 29-06 of the North Dakota Century Code is created and enacted as follows:

Foreign officer providing transportation for law enforcement purposes. Any member of a duly organized state, county, or municipal law enforcement unit of another state of the United States who enters this state to perform an assigned duty of transporting persons in legal custody for law enforcement purposes has the same authority to transport persons in legal custody as any member of any duly organized state, county, or municipal law enforcement unit of this state if a reciprocal right to transport persons in legal custody is extended to North Dakota peace officers in the peace officer's state or local jurisdiction.

SECTION 3. AMENDMENT. Section 29-06-06 of the North Dakota Century Code is amended and reenacted as follows:

29-06-06. Hearing before local magistrate and order thereon.

1. If an arrest is made in this state by an officer of another state in accordance with the provisions of section 29-06-05, he, without unnecessary delay, shall take the person arrested before a

magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state, or shall admit him to bail for such purpose. If the magistrate determines that the arrest was unlawful he shall discharge the person arrested.

2. Notwithstanding the provisions of chapter 29-30.3 and subsection 1, a person arrested for a misdemeanor or traffic violation pursuant to section 29-06-05 may voluntarily return to the foreign state without a hearing before a magistrate.

SECTION 4. AMENDMENT. Section 29-06-07 of the North Dakota Century Code is amended and reenacted as follows:

29-06-07. Definition of fresh pursuit. As used in section 29-06-05, the term "fresh pursuit" shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a ~~felony~~ or who is reasonably suspected of having committed a felony, misdemeanor, or traffic violation. It also shall include the pursuit of a person suspected of having committed a supposed felony, misdemeanor, or traffic violation, though no felony, misdemeanor, or traffic violation has been actually committed, if there is reasonable ground for believing that a felony, misdemeanor, or traffic violation has been committed. Fresh pursuit, as the term is used in this chapter, shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

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

Approved March 25, 1991
Filed March 26, 1991

CHAPTER 346

SENATE BILL NO. 2214
(Committee on Judiciary)
(At the request of the Attorney General)

FORFEITABLE PROPERTY

AN ACT to create and enact a new chapter to title 29 of the North Dakota Century Code, relating to proceedings for the forfeiture and disposition of property obtained by law enforcement agencies; to amend and reenact subdivision c of subsection 5 of section 12.1-28-02 of the North Dakota Century Code, relating to the forfeiture of gambling devices; and to repeal chapter 29-31 of the North Dakota Century Code, relating to confiscation of equipment used in the commission of a crime.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision c of subsection 5 of section 12.1-28-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- c. A law enforcement officer may seize any device described in subdivision a upon probable cause to believe that the device was used or is intended to be used in violation of this chapter or chapter 53-06.1. The court shall order the device forfeited in the same manner and according to the same procedure as provided under ~~chapter 19-03.1~~ section 2 of this Act.

SECTION 2. A new chapter to title 29 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Forfeitable property" means any of the following:
 - a. Property that is illegally possessed or is contraband.
 - b. Property that has been used or is intended to be used to facilitate the commission of a criminal offense or to avoid detection or apprehension of a person committing a criminal offense. For purposes of this subdivision, property does not include a residence or other real estate where a coowner, whether by joint tenancy, tenancy in common, or tenancy by the entirety, of the residence or other real estate, has not been convicted of the criminal offense that was facilitated by the use or intended use of the property.
 - c. Property that is acquired as or from the proceeds of a criminal offense.

- d. Property offered or given to another as an inducement for the commission of a criminal offense.
 - e. A vehicle or other means of transportation used in the commission of a felony, the escape from the scene of the commission of a felony, or in the transportation of property that is the subject matter of a felony.
 - f. Personal property used in the theft of livestock or the transportation of stolen livestock.
2. "Seized property" means property taken or held by any law enforcement agency in the course of that agency's official duties with or without the consent of the person, if any, who had possession or a right to possession of the property at the time it was taken into custody.
3. "Seizing agency" is the law enforcement agency that has taken possession of, or seized, property in the course of that agency's official duties.

Disposition of nonforfeitable property. Seized property that is not required as evidence or for use in an investigation may be returned to the owner without the requirement of a hearing, if the person's possession of the property is not prohibited by law, the property is not forfeitable property, and there is no forfeiture proceeding filed on behalf of the seizing agency. The seizing agency shall send notice by regular mail, if the value of the property is less than fifty dollars, or certified mail, if the value of the property is equal to or greater than fifty dollars, to the last known address of any person having an ownership or possessory right in the property stating that the property is released and must be claimed within thirty days. Notice is deemed to have been made upon the mailing of the notice. The notice must state that if no written claim for the property is made upon the seizing agency within thirty days after the mailing of the notice, the property will be deemed abandoned and disposed of accordingly. If there is more than one party who may assert a right to possession or ownership of the property, the seizing agency may not release the property to any party until the expiration of the date for filing claims unless all other claimants execute a written waiver. If there is more than one claim filed for the return of property under this section, at the expiration of the period for filing claims the seizing agency shall file a copy of all such claims with the clerk of the district court and deposit the property with the court in accordance with the provisions of chapter 32-11. If no owner can be located or no claim is filed under this section, the property is deemed abandoned and the seizing agency becomes the owner of the property and may dispose of it in any reasonable manner.

Seizure of forfeitable property. Forfeitable property may be seized whenever and wherever the property is found within this state. Forfeitable property may be seized by taking custody of the property or by serving upon the person in possession of the property a notice of forfeiture and seizure. If the court finds that the forfeiture is warranted, an order transferring ownership to the seizing agency must be entered and the property must be delivered to the seizing agency for disposition as directed by the court. Property that has been seized for forfeiture, and is not already secured as evidence in a criminal case, must be safely secured or stored by the agency that caused its seizure.

Forfeiture proceedings.

1. Forfeiture is a civil proceeding not dependent upon a prosecution for, or conviction of, a criminal offense and forfeiture proceedings are separate and distinct from any related criminal action.
2. Forfeiture proceedings brought under this chapter must be conducted in accordance with the procedures established for the forfeiture of property in sections 19-03.1-36.1 through 19-03.1-36.7.

Transfer of forfeitable property. Title to, and responsibility for, forfeitable property vests with the seizing agency at the time of the seizure. Once forfeitable property is seized, no right to the property may be transferred by anyone other than the seizing agency unless the seizure and forfeiture is declared by the court to be a nullity or as otherwise ordered by the court.

Disposition of forfeited property. When property is forfeited under this chapter, the seizing agency may:

1. Retain the property for official use or transfer the custody or ownership of any forfeited property to any federal, state, or local agency.
2. Sell the forfeited property that is not required to be destroyed by law and which is not harmful to the public. The proceeds from the sale, together with any monetary funds ordered to be forfeited, must be used first for the payment of all proper costs and expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs with any remaining proceeds to be deposited, subject to section 54-12-14, in the appropriate state, county, or city general fund.
3. Dispose of the property in accordance with the order of the court if the property cannot be retained, used, or sold by the seizing agency.

Nonforfeitable interest - Purchase of forfeitable interest.

1. Property may not be forfeited under this chapter to the extent of an interest of an owner who had no part in the commission of the crime and who had no knowledge of the criminal use or intended use of the property. However, if it is established that the owner permitted the use of the property under circumstances in which a reasonable person should have inquired into the intended use of the property and that the owner failed to do so, there is a rebuttable presumption that the owner knew that the property was intended to be used in the commission of a crime.
2. Upon receipt of forfeited property, the seizing agency shall permit any owner or lienholder of record having a nonforfeitable property interest in the property the opportunity to purchase the property interest forfeited. If the owner or lienholder does not exercise the option under this subsection within sixty days of mailing of written notice to such person of such option, the option is

terminated unless the time for exercising the option is extended by the seizing agency.

3. A person having a valid, recorded lien or property interest in forfeited property, which has not been repurchased pursuant to subsection 2, must either be reimbursed to the extent of the nonforfeitable property interest or to the extent of the amount raised by the sale of the item, whichever amount is less. The sale of forfeited property must be conducted in a manner that is commercially reasonable and calculated to provide a sufficient return to cover the cost of the sale and reimburse any nonforfeitable interest. The validity of a lien or property interest is determined as of the date the property is seized. All costs and expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs, must be first deducted from the sale proceeds and paid to the party incurring such costs and expenses.
4. This section does not preclude a civil suit by an owner of an interest in forfeited property against the party who, by criminal use, caused the property to become forfeited to the seizing agency.

Retention of forfeited property. If property forfeitable under this chapter is needed as evidence in a criminal proceeding, it must be retained under the control of the prosecuting attorney, or the prosecuting attorney's designee, until such time as its use as evidence is no longer required.

Disposition of forfeitable property held as evidence in criminal proceeding. Notwithstanding other provisions of this chapter, in the case of forfeitable property seized and held as evidence of the commission of a criminal offense, the court in which a criminal prosecution was commenced may issue its order, upon motion and after hearing unless waived, for disposition of the property in accordance with this chapter. Notice of the motion must be served in accordance with the rules of civil procedure upon the owner and all persons known to be claiming an interest in the property to be forfeited. The notice must be served at least twenty days before a hearing on the motion unless the time period is waived by all parties claiming an interest in the property. The motion must contain the information required in a complaint as set forth in section 19-03.1-36.3. Although no separate forfeiture proceeding is required to be instituted under this section, all other provisions of this chapter apply to proceedings commenced pursuant to this section.

Inapplicability of chapter. The provisions of this chapter do not apply to forfeiture proceedings commenced under other specific provisions of law including chapters 12.1-06.1, 19-03.1, and 20.1-10.

SECTION 3. REPEAL. Chapter 29-31 of the North Dakota Century Code is repealed.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 347

SENATE BILL NO. 2389
(Marks, O'Connell)

SEARCH WARRANT EXECUTION

AN ACT to amend and reenact section 29-29-08 of the North Dakota Century Code, relating to execution of a search warrant.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-29-08 of the North Dakota Century Code is amended and reenacted as follows:

29-29-08. Execution of warrant - Use of force. An officer directed to serve a search warrant may break open an outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant, (a) if, after notice of ~~his~~ the officer's authority and purpose, ~~he~~ be the officer is refused admittance, or (b) without notice of ~~his~~ the officer's authority and purpose if ~~a district judge issuing~~ a magistrate who is learned in the law and who has inserted a direction therein the warrant was issued by a ~~magistrate~~ magistrate that the officer executing it shall not be required to give such notice. The ~~district judge~~ magistrate may so direct only upon written or recorded oral petition and proof under oath, to ~~his~~ the magistrate's satisfaction, that the property sought may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, if such notice were to be given.

Approved April 5, 1991
Filed April 8, 1991