

# JUDICIAL PROCEDURE, CRIMINAL

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## CHAPTER 314

SENATE BILL NO. 2370  
(Nething, Freed)

### TIME FOR ARRESTS

AN ACT to amend and reenact section 29-06-08 and to repeal section 29-06-16 of the North Dakota Century Code relating to arrests.

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

SECTION 1. AMENDMENT.) Section 29-06-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-06-08. WHEN ARREST MADE FOR FELONY - MISDEMEANOR.) An arrest for a felony or misdemeanor may be made on any day and at any time of the day or night.

SECTION 2. REPEAL.) Section 29-06-16 of the North Dakota Century Code is hereby repealed.

Approved March 29, 1971

## CHAPTER 315

SENATE BILL NO. 2230  
(Freed, Nething, Ringsak, Sanstead)

## GRAND JURY

AN ACT to create and enact chapter 29-10.1 of the North Dakota Century Code relating to the grand jury, its termination, powers, duties, functions, and activities; providing for criminal contempt of court; and to repeal chapter 29-10, sections 29-09-08, 29-09-09, 29-09-10, 29-09-11, subdivisions c, d, and g of subsection 2 of section 29-14-04 of the North Dakota Century Code.

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

SECTION 1.) Chapter 29-10.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

29-10.1-01. "GRAND JURY" DEFINED - FORMATION - FUNCTIONS.) A grand jury shall consist of not less than eight nor more than eleven persons of the county possessing the qualifications of jurors prescribed by law, and impaneled and sworn to inquire into all crimes or public offenses against laws of this state triable within the county and, if the evidence warrants, present them to the district court by written indictment.

29-10.1-02. WHEN GRAND JURY MAY BE CALLED.) No grand jury may be drawn, summoned, or convened in any county within this state unless the district judge thereof shall so direct by a written order filed with the clerk of the court in the county wherein the said grand jury is required to attend. Any judge of the district court for any county must direct, in the manner herein provided, that a grand jury be drawn and summoned to attend whenever:

1. He deems the attendance of a grand jury necessary for the due enforcement of the laws of the state;
2. The board of county commissioners of the county wherein the court is to be held, in writing, requests him so to do; or
3. A petition in writing requesting the same is presented to the judge, signed by qualified electors of the county equal in number to at least ten percent of the total vote cast in the county for the office of governor of the state at the last general election.

29-10.1-03. JUDGE TO SUMMON GRAND JURY.) Upon presentment of the request of petition, the judge shall promptly summon and convene the grand jury.

29-10.1-04. PETITION FOR GRAND JURY - PETITIONERS - NUMBER - SESSION.) The petition for a grand jury prescribed by section 29-10.1-02 shall be verified on information and belief by at least three of the petitioners. The formation of a grand jury under this chapter shall not be invalidated should it appear or be proven after the grand jury has been summoned that any of the petitioners were not qualified electors or that the petition was not signed by the required number of qualified electors. No grand jury may remain in session in excess of ten calendar days, unless the judge by written order filed with the clerk of the court extends the session as may be necessary. Unless extended the grand jury shall be discharged at the close of the tenth day of its session. Saturdays, legal holidays and days in recess shall be excluded in computing the duration of the initial or extended session.

29-10.1-05. CHALLENGES BY STATE, WHEN AND CAUSES.)

1. The state may challenge the panel of a grand jury or an individual grand juror at any time before the grand jury is impaneled and sworn.
2. A challenge to the panel may be asserted by the state upon the ground only that the grand jurors were not selected according to law.
3. A challenge to an individual grand juror may be asserted by the state upon the ground only that he is not a qualified juror.

29-10.1-06. CHALLENGE MAY BE ORAL OR WRITTEN.) A challenge to the panel or to an individual grand juror may be oral or in writing and must be tried to the court.

29-10.1-07. CHALLENGE ALLOWED OR DISALLOWED - ENTRY BY CLERK.) The court must allow or disallow a challenge to the panel of a grand jury or to an individual grand juror, and the clerk must enter its decision upon the minutes.

29-10.1-08. CHALLENGE ALLOWED - PROCEDURE.) Whenever a challenge to the panel or to an individual grand juror is allowed, the court shall make an order to the jury commission to summon without delay a sufficient number of persons to complete or to form a grand jury.

29-10.1-09. JURY DISCHARGED IF CHALLENGE TO PANEL ALLOWED.) If a challenge to the panel is allowed, the grand jury must be discharged in which event the judge may order another grand jury to be summoned and convened.

29-10.1-10. CHALLENGE TO PANEL AFTER INDICTMENT PRESENTED.)

At any time prior to pleading to the indictment, the person against whom an indictment has been found and presented may move the court to quash the indictment upon the ground that the jurors were not selected or impaneled according to law.

29-10.1-11. COURT TO APPOINT FOREMAN AND VICE FOREMAN.) When the grand jury is completed, the court must appoint one of the jurors to be foreman, and another to act as foreman in case of the absence of the foreman.

29-10.1-12. OATH OF GRAND JURORS.) The following oath must be administered to the members of the grand jury:

"You, as members of this grand jury, shall diligently inquire into, and true presentment make, of all public offenses against this state, committed or triable within this county, which will be brought to your attention or come to your knowledge. You will keep your own counsel, and that of your fellows, and of the state, and, except when required in the due course of judicial proceedings, must not disclose the testimony of any witness examined before you, nor disclose anything which you or any other grand juror may have said, nor the manner in which you or any other grand juror may have voted on any matter before you. You shall indict no person through malice, hatred, or ill will, nor leave any unindicted through fear, favor, or affection, nor for any reward or the promise or hope thereof, but in all your indictments, you shall present the truth, the whole truth and nothing but the truth, according to the best of your skill and understanding. So help you God."

29-10.1-13. COURT MUST CHARGE GRAND JURY - DUTY OF COURT TO ADVISE.) After the grand jury is impaneled and sworn, the court must charge the jurors concerning the offenses that may be considered by them or that are likely to come before them, and concerning their duties as prescribed by law. The court, upon request of the grand jurors and at all reasonable times, shall advise them regarding their duties.

29-10.1-14. RETIREMENT OF GRAND JURORS.) After the charge by the court, the grand jurors must retire to a private room which shall be provided for by the county commissioners and perform their duties as prescribed by law.

29-10.1-15. CLERK, APPOINTMENT BY GRAND JURORS - DUTY.) The grand jury, unless a competent reporter is appointed, shall appoint a member of the jury as clerk, who must preserve minutes of all the proceedings of the jurors, and exhibits presented, except of the votes of the individual members, and of the evidence given before them. Upon the conclusion of the grand jury session, all exhibits shall be placed in the custody of the state's attorney unless otherwise directed by the court.

## 29-10.1-16. REPORTER - TRANSCRIPT.)

1. Unless otherwise directed by the court, the grand jury shall appoint a competent reporter who shall be sworn and who shall record in shorthand or stenotype notes, the testimony given in matters before the grand jury. Whenever an indictment is returned, and if so directed by the court, the reporter shall cause the testimony to be transcribed.
2. Whenever the court directs the testimony to be transcribed, the reporter shall certify and file with the clerk of court the original and sufficient copies of the transcript so as to provide a copy for each person indicted and one for the state's attorney or prosecutor. The reporter shall complete the certification of the transcript within thirty days after the date of the order unless a different period of time is specified by the court.
3. All exhibits presented to the grand jury shall be placed in the custody of the state's attorney or prosecutor unless otherwise directed by the court.

29-10.1-17. SELECTION OF JURORS.) Before accepting a person drawn as a grand juror, the court shall be satisfied that such person is duly qualified to act as such. A person drawn as a juror may be excused for good cause by the court before he is sworn.

29-10.1-18. EXPENSES.) All necessary expenses of the grand jury incurred in its official capacity shall be paid by the county out of the general fund.

29-10.1-19. SUBPOENAS.) The grand jury may issue subpoenas or subpoenas duces tecum to any witness within the state. Subpoenas may also be issued by the state's attorney or prosecutor in the manner provided in the statutes or rules of criminal procedure.

29-10.1-20. FILLING VACANCIES.) Whenever the membership of a grand jury is reduced in number for any reason, after the grand jury has been impaneled, the judge may direct that the vacancy be filled, and must so direct if necessary to maintain the minimum number required, in the same manner as the original members were selected. No person selected as a grand juror to fill a vacancy shall vote on any matter upon which evidence has been taken prior to the time of his selection.

29-10.1-21. GENERAL DUTIES OF GRAND JURY.) The grand jury shall inquire into the cause of detention of every person imprisoned in the jail of the county against whom neither a criminal complaint nor information has been filed, or who has not had or waived a preliminary examination, and into all public offenses

committed or triable in the county, and if the evidence so warrants, shall present them to the court by written indictment. As to any offense committed while the grand jury is in session, the state's attorney or prosecutor may proceed with a preliminary examination or the filing of an information, as provided for by law, and prosecute the charge, and, under such conditions, the grand jury shall not be required to inquire into such offense. The presentment of an indictment against a person does not preclude the prosecution of such person for the same offense upon a criminal complaint or information previously filed with the court.

29-10.1-22. SUBJECTS OF GRAND JURY INQUIRY.) Whenever directed by the district court, the grand jury must inquire into:

1. The condition and management of the public prisons in the county; and
2. Willful and corrupt misconduct in office of public officials of every description in the county.

29-10.1-23. GRAND JURORS ENTITLED TO ACCESS TO PRISONS AND PUBLIC RECORDS.) Grand jurors are entitled to free access, at all reasonable times, to public prisons, and to the examination, without charge, of all public records in the county.

29-10.1-24. MEMBER MUST REPORT OFFENSE KNOWN TO HIM AND MUST GIVE EVIDENCE.) If a member of a grand jury knows or has reason to believe that a public offense which is triable in the county has been committed, he must declare such fact to his fellow jurors, who must investigate the same. In such investigation, the grand juror may be sworn as a witness.

29-10.1-25. OATH TO WITNESS.) The foreman or the prosecuting officer may administer an oath to any witness appearing before the grand jury. If the witness refuses to answer questions or produce evidence of any other kind on the ground that he may be incriminated thereby, proceedings may be had under section 31-01-09.

29-10.1-26. RECEPTION OF EVIDENCE.)

1. Subject to subsection 2 of this section, the grand jury shall receive only evidence which is:
  - a. Given by witnesses produced and sworn before the grand jury;
  - b. Furnished by writings, material objects, or other things perceivable through the senses; or
  - c. Contained in a deposition or transcript that is admissible under the rules of criminal procedure.
2. The grand jury shall receive only evidence that would

be admissible over objection at the trial of a criminal action, but the fact the evidence inadmissible at the trial was received by the grand jury does not render the indictment void if sufficient competent evidence to support the indictment was received by the grand jury.

29-10.1-27. EXCULPATORY EVIDENCE.) The grand jury shall weigh all the evidence submitted to it, and when it has reason to believe that there is exculpatory evidence within its reach, it shall order the evidence to be produced, and for that purpose may require the state's attorney or prosecutor to issue process for the production of such evidence.

29-10.1-28. WHO MAY BE PRESENT DURING SESSIONS OF GRAND JURY.) No person may be present at a session of the grand jury, other than the witnesses under examination, the judge while giving advice requested by the grand jury, the state's attorney or prosecutor, the attorney general, and the reporter, or interpreter, if any. No person other than the grand jurors may be present while the grand jurors are deliberating or voting, nor may the grand jurors deliberate or vote while any other persons are present. Whenever the grand jury is investigating the state's attorney or any person connected with his office, neither the state's attorney nor any of his assistants or staff may be present before such grand jury during the time of such investigation, except as a witness and, after such appearance as a witness, must leave the place where the grand jury is in session.

29-10.1-29. DUTY OF STATE'S ATTORNEY.) The state's attorney or prosecutor, upon the request of the grand jurors, shall advise them regarding their duties. He, at all reasonable times, may appear before them on his own motion for the purpose of giving the grand jurors information or advice regarding any matter cognizable by them and may interrogate witnesses before them whenever he believes it necessary.

29-10.1-30. SECRECY OF THINGS SAID, AND VOTES.) Every member of a grand jury must keep secret whatever he himself or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before the jurors.

29-10.1-31. WHEN JUROR MAY DISCLOSE TESTIMONY UPON ORDER OF THE COURT.) A member of a grand jury, its reporter, or interpreter, may be required by any court to disclose the testimony of a witness examined before the grand jury for the purpose of impeachment of the witness before the court, or to disclose the testimony given before them by any person, upon a charge against him for perjury in giving his testimony, or upon his trial in a criminal prosecution.

29-10.1-32. GRAND JUROR CANNOT BE QUESTIONED.) A grand juror cannot be questioned for anything he may say, or any vote

he may give, in a session of the grand jury, relative to a matter legally pending before the jurors, except upon a charge against him for perjury in giving his testimony to his fellow jurors.

29-10.1-33. WHEN INDICTMENT OUGHT TO BE FOUND.) The grand jurors shall find an indictment charging a person with the commission of an offense when all the evidence before them, taken together, is such as in their judgment would warrant a conviction by the trial jury.

29-10.1-34. FINDING INDICTMENT - NUMBER OF JURORS REQUIRED.) An indictment cannot be found without the concurrence of at least six grand jurors. Whenever so found, it must be endorsed "a true bill" and the endorsement must be signed by the foreman of the grand jury. The names of the witnesses known to the grand jury shall be endorsed thereon before the indictment is presented to the court.

29-10.1-35. PRESENTMENT OF INDICTMENT TO COURT BY FOREMAN.) An indictment found by the grand jurors must be presented by the foreman, in their presence, to the court, and must be filed with the clerk.

29-10.1-36. PERSONS INDICTED, HOW ARRESTED.) Whenever an indictment is found and presented against a person, the proceedings prescribed in chapter 29-12 shall govern when necessary to secure his appearance before the court.

29-10.1-37. JURORS TO BE DISCHARGED UPON COMPLETION OF BUSINESS.) Upon the completion of the business before them, or whenever the court shall be of opinion that the public interests will not be served by further continuation of their sessions, the grand jurors must be discharged by the court.

29-10.1-38. TRANSCRIPT DEMAND - WAIVER OF TRANSCRIPT AND PRELIMINARY EXAMINATION, WHEN.) Within five days after his first appearance before a magistrate, a person against whom an indictment has been found and presented may make a written demand to the district judge for a copy of the transcript of the testimony given before the grand jury as it relates to him and the charges against him. Upon receipt of such written demand, the judge shall issue an appropriate order. If the judge for any reason determines that a copy of a transcript of the testimony cannot be obtained, the person indicted shall be entitled, but not otherwise, to a preliminary examination, as provided by the statutes or rules of criminal procedure for persons otherwise charged with a crime. Under such conditions the preliminary examination shall be had before a judge of a county court, if it has increased jurisdiction, or a district judge, of the county in which the crime was committed or is triable. Failure to make such demand within the time prescribed constitutes a waiver of the right to the transcript or to a preliminary examination.

29-10.1-39. VIOLATION CONSTITUTES CONTEMPT.) Any person



who willfully violates any provision of this chapter is guilty of criminal contempt of court.

SECTION 2. REPEAL.) Chapter 29-10, sections 29-09-08, 29-09-09, 29-09-10, 29-09-11 and subdivisions c, d and g of subsection 2 of section 29-14-04 of the North Dakota Century Code are hereby repealed.

Approved March 30, 1971

## CHAPTER 316

SENATE BILL NO. 2383  
(Chesrown)

## DEMAND FOR CHANGE OF JUDGE

AN ACT to provide for the change of a district court judge upon written demand of a party and prescribing the procedure therefor; and to repeal chapter 28-13 and sections 29-15-13, 29-15-14, 29-15-15, 29-15-16, 29-15-17, 29-15-19, and 29-15-20 of the North Dakota Century Code, relating to affidavits of prejudice are hereby repealed.

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

## SECTION 1. DEMAND FOR CHANGE OF JUDGE.)

1. Subject to the provisions of this section, any party to a civil or criminal action or proceeding pending in the district court of any county in this state may obtain a change of the judge before whom the trial or any proceeding with respect thereto is to be heard, by filing with the clerk of the court in which the action or proceeding is pending a written demand for change of judge, executed in triplicate by the personal signature of the party, if an individual, and by personal signature of an authorized officer, if a corporation or association.
2. The demand is not operative unless it is filed with the clerk of the court at least three days before the matter is to be heard if upon a motion or upon arraignment, or ten days before the date the action or proceeding is scheduled for trial. In any event, no demand for a change of judge may be made after the judge sought to be disqualified has ruled upon any matter pertaining to the action or proceeding in which the demanding party was heard or had an opportunity to be heard.
3. The demand for change of judge shall state that it is filed in good faith and not for the purposes of delay. It shall indicate the nature of the action or proceeding, designate the judge sought to be disqualified, and certify that he has not ruled upon any matter pertaining to the action or proceeding in

which the moving party was heard or had an opportunity to be heard.

4. Upon the filing of the demand for change of judge, the clerk shall forthwith notify the judge sought to be disqualified by delivering to him a copy of the demand, and promptly forwarding another copy of the demand to the clerk of the supreme court.
5. Upon receipt of a copy of a timely filed demand for change of judge, the judge sought to be disqualified shall proceed no further in the action or proceeding and is thereafter disqualified from doing any further act in the cause.
6. If a demand for a change of judge has been made and another judge assigned by the supreme court, the supreme court may decline to grant another demand for a change of judge made by a party whose interests in the matter are not adverse to those of the party whose demand was granted. A judge assigned by the supreme court pursuant to a demand for change of judge is not disqualified upon a subsequent demand for change of judge unless and until the subsequent demand is granted and notice thereof is given to him by the supreme court. A subsequent demand for a change of judge may be made only within five days after receiving notice of the assignment of a judge by the supreme court pursuant to a previous demand.
7. Upon receipt of a timely filed demand for a change of judge from the clerk of the district court of any county in this state, the supreme court shall designate a district judge to act in the place and stead of the judge disqualified.
8. The judge designated, as soon as possible after receiving such notice from the supreme court and during the same term unless agreement to the contrary is made by the parties, shall proceed with the hearing or trial, first giving to the parties or their attorneys reasonable notice of the date of the hearing or trial.
9. Whenever a demand for a change of judge is filed in a criminal action, in accordance with the provisions of this section, and the party also asks for a change of place of trial upon any ground specified in section 29-15-01, the court shall proceed no further in the action and thereupon shall be disqualified to do any further act in said cause. In such case, the application for a change of place of trial shall be heard and determined by the judge

designated by the supreme court to act in said action.

SECTION 2. REPEAL.) Chapter 28-13 and sections 29-15-13, 29-15-14, 29-15-15, 29-15-16, 29-15-17, 29-15-19, and 29-15-20 of the North Dakota Century Code are hereby repealed.

Approved March 17, 1971

## CHAPTER 317

HOUSE BILL NO. 1380  
(Atkinson)

## GROUNDS FOR NEW TRIAL

AN ACT to amend and reenact subsection 8 of section 29-24-02 of the North Dakota century Code, relating to grounds for a new trial, and declaring an emergency.

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

SECTION 1. AMENDMENT.) Subsection 8 of section 29-24-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. When the defendant, without fault or negligence on his or her part, is unable to procure a correct and complete transcript of the evidence given and the proceedings had at a trial after a plea of not guilty.

SECTION 2. EMERGENCY.) This measure is hereby declared to be an emergency measure and shall be in full force and effect from and after the date of its passage and approval.

Approved March 12, 1971

## CHAPTER 318

SENATE BILL NO. 2311  
(Freed)

## GROUNDS FOR ISSUING SEARCH WARRANT

AN ACT to create and enact subsection 4 of section 29-29-02 of the North Dakota Century Code, relating to grounds for the issuance of a search warrant.

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

SECTION 1.) Subsection 4 of section 29-29-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

4. When it is any property that constitutes or may constitute evidence of a criminal offense in violation of the laws of this state.

Approved March 17, 1971

## CHAPTER 319

SENATE BILL NO. 2302  
(Freed)TEMPORARY INTERROGATION AND  
SEARCH OF NARCOTICS SUSPECTS

AN ACT to amend and reenact subsection 4 of section 29-29-21 of the North Dakota Century Code, relating to the temporary questioning and searching of persons in public places suspected of possessing narcotic and other drugs.

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

SECTION 1. AMENDMENT.) Subsection 4 of section 29-29-21 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. A violation of any provision relating to possession of marijuana or of narcotic, hallucinogenic, depressant, or stimulant drugs.

Approved March 27, 1971

## CHAPTER 320

SENATE BILL NO. 2069  
(Doherty, Longmire, Pyle, Unruh)  
(From Legislative Council Study)

INTERSTATE RENDITION  
OF ACCUSED PERSONS

AN ACT to create and enact chapter 29-30.1 of the North Dakota Century Code, relating to the interstate rendition of accused persons.

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

SECTION 1.) Chapter 29-30.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

29-30.1-01. PRESENCE OF PERSON CHARGED WITH CRIME IN ANOTHER STATE - DOCUMENTS FILED BY AGENT - ISSUANCE OF WARRANT.)

1. If a person who has been charged with a crime in another state and released from custody prior to final judgment, including the disposition of any appeal, is alleged to have violated the terms and conditions of his release and is present in this state, a designated agent of the court, judge, or magistrate who authorized the release may request the issuance of a warrant for the arrest of the person and an order authorizing his return to the demanding court, judge, or magistrate. Before the warrant is issued, the designated agent must file with a magistrate of the county or city wherein the person sought may be located the following documents:
  - a. An affidavit stating the name and whereabouts of the person whose removal is sought, the crime with which the person was charged, the time and place of the crime charged, and the status of the proceedings against him.
  - b. A certified copy of the order or other document specifying the terms and conditions under which the person was released from custody.
  - c. A certified copy of an order of the demanding court, judge, or magistrate stating the manner in which the terms and the conditions of the release have been violated, and designating the affiant as its agent for seeking removal of the person.



2. Upon initially determining that the affiant is a designated agent of the demanding court, judge, or magistrate, and that there is probable cause for believing that the person whose removal is sought has violated the terms or conditions of his release, the magistrate shall issue a warrant to a law enforcement officer of this state for the person's arrest.
3. The magistrate shall notify the state's attorney of his action, and shall direct him to investigate the case to ascertain the validity of the affidavits and documents required by subsection 1 of this section, and the identity and authority of the affiant.

29-30.1-02. PROCEDURE UPON ARREST OF PERSON SOUGHT - HEARING - WAIVER OF HEARING - RELEASE PRIOR TO HEARING.)

1. The person whose removal is sought shall be brought before the magistrate immediately upon arrest pursuant to the warrant; whereupon the magistrate shall set a time and place for hearing, and shall advise the person of his right to have the assistance of counsel, to confront the witnesses against him, and to produce evidence in his own behalf at the hearing.
2. The person whose removal is sought may at this time waive, in writing, the hearing and agree to be returned to the demanding court, judge, or magistrate. If a waiver is executed, the magistrate shall issue an order pursuant to section 29-30.1-03.
3. The magistrate may impose conditions of release authorized by the laws of this state, which will reasonably assure the appearance at the hearing of the person whose removal is sought.

29-30.1-03. PROCEDURE AT HEARING - DUTY OF STATE'S ATTORNEY - ISSUANCE OF ORDER.) The state's attorney shall appear at the hearing and shall report to the magistrate the results of his investigation. If the magistrate finds that the affiant is a designated agent of the demanding court, judge, or magistrate, that the person whose removal is sought was released from custody by the demanding court, judge, or magistrate, and that the person has violated the terms or conditions of his release, the magistrate shall issue an order authorizing the return of the person to the custody of the demanding court, judge, or magistrate forthwith.

29-30.1-04. UNIFORMITY OF INTERPRETATION - SHORT TITLE.) This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it, and it may be cited as the Uniform Rendition of Accused Persons Act.

Approved March 4, 1971

## CHAPTER 321

SENATE BILL NO. 2289  
(Chesrown)

## MANDATORY DISPOSITION OF DETAINERS

AN ACT relating to the mandatory disposition of detainees for criminal charges pending against persons imprisoned in this state and constituting the Uniform Mandatory Disposition of Detainers Act.

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

SECTION 1. REQUEST FOR DISPOSITION OF PENDING CHARGES - DUTY TO INFORM PRISONER - DISMISSAL.)

1. Any person who is imprisoned in a penal or correctional institution of this state may request final disposition of any untried indictment, information or complaint pending against him in this state. The request shall be in writing addressed to the court in which the indictment, information or complaint is pending and to the prosecuting official charged with the duty of prosecuting it, and shall set forth the place of imprisonment.
2. The warden or other official having custody of prisoners shall promptly inform each prisoner in writing of the source and nature of any untried indictment, information or complaint against him of which the warden or other official had knowledge or notice and of his right to make a request for final disposition thereof.
3. Failure of the warden or other official to inform a prisoner, as required by this section, within one year after a detainer has been filed at the institution shall entitle him to a final dismissal of the indictment, information or complaint with prejudice.

SECTION 2. DUTY TO INFORM COURT AND PROSECUTING OFFICIAL.) The request shall be delivered to the warden or other official having custody of the prisoner, who shall forthwith

1. Certify the term of commitment under which the

prisoner is being held, the time already served on the sentence, the time remaining to be served, the good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole board relating to the prisoner; and

2. Send by registered or certified mail, return receipt requested, one copy of the request and certificate to the court and one copy to the prosecuting official to whom it is addressed.

SECTION 3. WHEN CHARGES BROUGHT TO TRIAL - DISMISSAL.)

Within ninety days after the receipt of the request and certificate by the court and prosecuting official or within such additional time as the court for good cause shown in open court may grant, the prisoner or his counsel being present, the indictment, information or complaint shall be brought to trial; but the parties may stipulate for a continuance or a continuance may be granted on notice to the attorney of record and opportunity for him to be heard. If, after such a request, the indictment, information or complaint is not brought to trial within that period, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information or complaint be of any further force or effect, and the court shall dismiss it with prejudice.

SECTION 4. REQUEST VOIDED BY ESCAPE.)

Escape from custody by any prisoner subsequent to his execution of a request for final disposition of an untried indictment, information or complaint voids the request.

SECTION 5. EXCLUSIONS.)

This Act does not apply to any person while under commitment to an institution for the mentally ill or mentally deficient.

SECTION 6. PRISONERS TO BE INFORMED OF ACT.)

The warden or other official having custody of prisoners shall arrange for all prisoners to be informed in writing of the provisions of this Act, and for a record thereof to be placed in the prisoner's file.

SECTION 7. APPLICATION AND CONSTRUCTION.)

This Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states which enact it.

SECTION 8. CITATION OF ACT.)

This Act may be cited as the Uniform Mandatory Disposition of Detainers Act.

Approved March 24, 1971

## CHAPTER 322

SENATE BILL NO. 2305  
(Chesrown)

## INTERSTATE AGREEMENT ON DETAINERS

AN ACT providing for the adoption of an interstate agreement on detainers and for the implementation thereof.

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

SECTION 1. AGREEMENT ON DETAINERS.) The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

## ARTICLE I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

## ARTICLE II

As used in this agreement:

- (1) "State" shall mean a state of the United States; the United States of America; a territory of possession of the United States; District of Columbia; the Commonwealth of Puerto Rico;
- (2) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant

to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof;

- (3) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

#### ARTICLE III

- (1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.
- (2) The written notice and request for final disposition referred to in paragraph (1) hereof shall be given or sent by the prisoner to the official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.
- (3) The official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.
- (4) Any request for final disposition made by a prisoner pursuant to paragraph (1) hereof shall operate as

a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

- (5) Any request for final disposition made by a prisoner pursuant to paragraph (1) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (4) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to affectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.
- (6) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (1) hereof shall void the request.

#### ARTICLE IV

- (1) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with

Article V, paragraph (1), hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

- (2) Upon receipt of the officer's written request as provided in paragraph (1) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.
- (3) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.
- (4) Nothing contained in the Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (1) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.
- (5) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V, paragraph (5), hereof, such indictment, information or complaint shall not be of any further force or effect, and

the court shall enter an order dismissing the same with prejudice.

ARTICLE V

- (1) In response to a request made under Article III or Article IV, hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of federal prisoners, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.
- (2) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:
  - (a) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.
  - (b) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which a request for temporary custody of the prisoner has been made.
- (3) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.
- (4) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints



which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

- (5) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.
- (6) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.
- (7) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.
- (8) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

#### ARTICLE VI

- (1) In determining the duration and expiration dates of the time periods provided in Articles III and IV of

this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

- (2) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

#### ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

#### ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

#### ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

SECTION 2. DEFINITION - APPROPRIATE COURT.) The phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this state, mean any court with criminal jurisdiction in the matter involved.

SECTION 3. ENFORCEMENT AND COOPERATION DIRECTED.) All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one

another and with other party states in enforcing the agreement and effectuating its purpose.

SECTION 4. APPLICATION OF HABITUAL CRIMINAL LAW NOT REQUIRED.) Nothing in this act or in the agreement on detainers shall be construed to require the application of the habitual criminal law of this state to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement.

SECTION 5. ESCAPE FROM CUSTODY.) Escape or attempt to escape from custody, whether within or without this state, while in the temporary custody of an authority of another state acting pursuant to the agreement on detainers shall constitute an offense against the laws of this state. Such escape or attempt to escape shall constitute an offense to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been released to temporary custody, and shall be punishable in the same manner as an escape or attempt to escape from said institution.

SECTION 6. LAWFUL AND MANDATORY TO GIVE OVER INMATES.) It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

SECTION 7. ATTORNEY GENERAL SHALL BE THE ADMINISTRATOR.) The attorney general is hereby designated as the officer who shall be the central administrator of and information agent for the agreement on detainers as provided in Article VII of the agreement.

SECTION 8. TO WHOM COPIES OF THIS ACT SHALL BE SENT.) Copies of this Act shall, upon its approval, be transmitted to the governor of each state, the attorney general and the administrator of general services of the United States, and the council of state governments.

Approved March 24, 1971