

# JUDICIAL PROCEDURE, CRIMINAL

## CHAPTER 288

HOUSE BILL NO. 1303  
(Winkjer, Richie)

### MOTION TO DISMISS INDICTMENT

AN ACT to amend and reenact section 29-10.1-10 of the North Dakota Century Code, relating to challenge of selection of grand jurors.

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

SECTION 1. AMENDMENT.) Section 29-10.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 dismiss the indictment upon the ground that the jurors were not selected or impaneled according to law.

Approved March 12, 1977

## CHAPTER 289

HOUSE BILL NO. 1535  
(Swiontek)

OATH OR AFFIRMATION OF GRAND JURY  
WITNESS

AN ACT to amend and reenact section 29-10.1-25 of the North Dakota Century Code, relating to the oath or affirmation administered to grand jury witnesses.

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

SECTION 1. AMENDMENT.) Section 29-10.1-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-10.1-25. OATH OR AFFIRMATION TO WITNESS.)

1. The foreman or the prosecuting officer shall administer the following oath or affirmation to each witness appearing before the grand jury before being interrogated:

You do solemnly swear (affirm) that you will not divulge, either by words or signs, any matter about which you may be interrogated, and that you will keep secret all proceedings of the grand jury which may be had in your presence, and that you will answer truthfully such questions as may be propounded to you by the grand jury, or under its direction, so help you God.

Any witness who has conscientious scruples as to the oath above described shall be allowed to make affirmations substituting for "So help you God" at the end of the oath the following:

This you do affirm under the pains and penalties of perjury.

2. 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.

Approved March 31, 1977

## CHAPTER 290

HOUSE BILL NO. 1536  
(Swiontek)

## LIMITED DISCLOSURE OF GRAND JURY MATTERS

AN ACT to amend and reenact section 29-10.1-30 of the North Dakota Century Code, relating to grand jury secrecy under certain conditions.

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

SECTION 1. AMENDMENT.) Section 29-10.1-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-10.1-30. SECRECY OF THINGS SAID, AND VOTES - LIMITED DISCLOSURE BY CERTAIN PERSONS AND UNDER CERTAIN CONDITIONS.)

1. 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.
2. Matters other than the deliberations and vote of any grand juror may be disclosed by the state's attorney, prosecutor, or attorney general solely in the performance of his duties.
3. Otherwise a juror, attorney, interpreter, reporter, or public servant, having official duties in or about a grand jury room or proceeding, may disclose matters occurring before the grand jury only when so directed by the court pursuant to section 29-10.1-31.
4. A witness shall not disclose any matter about which he is interrogated, or any proceedings of the grand jury had in his presence, except to his attorney or when so directed by the court, until an indictment is filed and the accused person is in custody.

Approved April 6, 1977

## CHAPTER 291

HOUSE BILL NO. 1240  
(Committee on Judiciary)  
(At the request of the Attorney General)

## STATE GRAND JURY

AN ACT to provide for the impanelling, powers, duties, composition, and function of a state grand jury, and authorizing the attorney general to request that a state grand jury be impanelled in certain cases.

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

SECTION 1. ATTORNEY GENERAL TO REQUEST STATE GRAND JURY - DISTRICT COURT TO IMPANEL JURY.) Whenever the attorney general considers it to be in the public interest to convene a grand jury with jurisdiction extending beyond the boundaries of any single county, he shall petition a judge of the district court for an order impanelling a state grand jury. The judge shall, upon good cause shown, order the impanelling of a state grand jury which shall have jurisdiction to investigate and indict for crimes committed anywhere within the state. In determining good cause for impanelling a state grand jury, the judge shall require a showing that the matter concerns multicounty criminal activities which involves organized crime as that term is defined herein or corruption of law enforcement officers or other public officers, officials, or employees. The authority and powers granted to the attorney general by this Act does not supplant or diminish the authority and powers as set out in chapter 29-10.1 of the North Dakota Century Code.

SECTION 2. IMPANELLING STATE GRAND JURY - SELECTION - COMPOSITION.) The judge granting the order to impanel a state grand jury shall determine the counties from which the grand jurors are to be selected with due regard for the expense involved and the inconvenience of travel. The judge granting the order for a state grand jury shall notify the clerk of district court of each county from which he intends to select the members of the state grand jury. Upon receipt of the notice to impanel a state grand jury, each clerk of district court shall prepare a list of nine prospective state grand jurors from existing county jury lists in the manner provided by chapter 27-09.1, and forward his state grand jury list to the clerk of district court of the county in which the order to impanel a state grand jury was granted. The judge granting the order shall impanel the state grand jury from such lists. A state grand jury shall be composed of not less than eight nor more than

eleven persons and each grand juror shall possess the qualifications of jurors within their respective counties as provided by law. However, not more than one-half of the members shall be residents of one county. The members of the state grand jury shall be selected and the foremen appointed in the manner provided by chapter 29-10.1 of the North Dakota Century Code and shall serve a term or terms as provided therein.

SECTION 3. SUMMONING JURORS - PRESENTATION OF EVIDENCE - RETURN OF INDICTMENTS.)

1. State grand jurors shall be summoned in the same manner and shall be governed by the same provisions as jurors of county grand juries. Judicial supervision of the state grand jury shall be maintained by the judge who granted the order impanelling the state grand jury in the same manner as with county grand juries. All indictments or other formal returns of any kind made by the state grand jury shall be returned to that judge. An indictment may be found only upon the concurrence of at least six jurors.
2. The presentation of the evidence shall be made to a state grand jury by the attorney general, an assistant attorney general, or special counsel appointed by the attorney general.
3. Any indictment by a state grand jury shall be returned to the supervising judge without any designation of venue. Thereupon the judge shall designate the county of venue for the purposes of trial.

SECTION 4. GRAND JURY INVESTIGATIONS - CONFIDENTIALITY - EXCEPTIONS.)

1. In addition to its power of indictment, a state grand jury impanelled under this act may, at the request of the attorney general, cause an investigation to be made into the extent of multicounty criminal activity which involves organized crime as defined herein or corruption of law enforcement officers or other public officers, officials, or employees.
2. Disclosure of any matters occurring before a state grand jury, other than its deliberation and the vote of any juror, may be made to the attorney general for use in the performance of his duties. The attorney general may disclose so much of the state grand jury's proceedings to law enforcement agencies as he considers essential to the public interest and effective law enforcement.
3. No report or presentment of a state grand jury relating to an individual which is not accompanied by a true bill of indictment shall be made public or be published until

the individual concerned has been furnished a copy thereof and given thirty days to file with the district court a motion to suppress or expunge the report or that portion which is improper and unlawful. Any such motion, whether granted or denied, shall automatically act as a stay of public announcement of such report, or portion thereof, until the district court's ruling on the motion is either affirmed or denied by an appellate court, or until the time within which such order may be so appealed has expired, whichever occurs first.

SECTION 5. JUROR FEES AND EXPENSES - APPROPRIATION.)

1. State grand jurors, in addition to receiving the juror fee provided by law for petit jurors, shall be reimbursed for necessary expenses on a per diem basis in the same manner and at the same rate as state employees.
2. The costs and expenses incurred in impanelling a state grand jury and in the performance of its functions and duties shall be paid by the state out of funds appropriated to the attorney general.

SECTION 6. DEFINITION.) As used in this Act, "organized crime" means any combination or conspiracy of two or more persons to engage in criminal activity as a significant source of income or livelihood, or to violate, aid or abet the violation of criminal laws relating to prostitution, gambling, loansharking, drug abuse, illegal alcohol or drug distribution, counterfeiting, extortion, or corruption of law enforcement officers or other public officers or employees.

SECTION 7. LEGISLATIVE INTENT.) It is the intent of the legislative assembly that the expenses of state grand jury investigations in excess of funds available for such purposes in the appropriation to the attorney general for the biennium beginning July 1, 1977, and ending June 30, 1979, shall be funded from the emergency commission appropriation to the extent available or from other available sources.

Approved April 14, 1977

## CHAPTER 292

HOUSE BILL NO. 1370  
(Conmy)

## JURY SIZE IN CRIMINAL CASES

AN ACT to amend and reenact section 29-17-12 of the North Dakota Century Code, relating to the size of juries in criminal cases.

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

SECTION 1. AMENDMENT.) Section 29-17-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-17-12. NUMBER OF JURORS - HOW SWORN.) In all felony cases when a jury is empaneled, a jury shall consist of twelve qualified jurors, and in all misdemeanor cases when a jury is empaneled, a jury shall consist of six qualified jurors unless any party makes a timely written demand for a jury of twelve. Jurors shall be sworn or affirmed well and truly to try and true deliverance make between the state of North Dakota and the defendant whom they shall have in charge, and a true verdict to give according to the evidence, and such verdict must be unanimous.

Approved March 12, 1977

## CHAPTER 293

SENATE BILL NO. 2324  
(Freed)

## COSTS OF CRIMINAL PROSECUTIONS

AN ACT to amend and reenact section 29-26-22 of the North Dakota Century Code, relating to fines and costs of criminal prosecutions.

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

SECTION 1. AMENDMENT.) Section 29-26-22 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-26-22. JUDGMENT FOR FINES AND COSTS - STATEMENT TO BE FILED BY COURT - DOCKETING AND ENFORCEMENT.) In all cases of conviction, the costs of the prosecution may be taxed against the defendant. If the court does assess costs as part of its sentence, the court shall include in the judgment the facts justifying the amount assessed. Costs shall not include any apportionment of salaries of judicial or law enforcement officers, nor shall any apportionment of maintenance costs, utility expenses, or amortization of capital expenditures be included in any assessment of costs. A judgment that the defendant pay a fine and costs, or either, must be docketed, and thereafter constitutes a lien upon the real estate of the defendant in like manner as a judgment for money rendered in a civil action.

Approved April 19, 1977



## CHAPTER 294

HOUSE BILL NO. 1223  
(Committee on Judiciary)  
(At the request of the Attorney General)

## STATE MAY APPEAL SUPPRESSION ORDER

AN ACT to create and enact a new subsection to section 29-28-07 of the North Dakota Century Code, relating to an appeal by the state of an order suppressing evidence.

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

SECTION 1.) A new subsection to section 29-28-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

An order granting the return of property or suppressing evidence, or suppressing a confession or admission, when accompanied by a statement of the prosecuting attorney asserting that the deprivation of the use of the property ordered to be returned or suppressed or of a confession or admission ordered to be suppressed has rendered the proof available to the state with respect to the criminal charge filed with the court, (1) insufficient as a matter of law, or (2) so weak in its entirety that any possibility of prosecuting such charge to a conviction has been effectively destroyed. The statement shall be filed with the clerk of district court and a copy thereof shall accompany the notice of appeal.

Approved April 6, 1977