

# COUNTIES

## CHAPTER 137

HOUSE BILL NO. 1640  
(Representatives Dalrymple, Gates, Wilkie)  
(Senators Dotzenrod, Kelsh, Peterson)

### COUNTY SUPERINTENDENT OF SCHOOLS

AN ACT to create and enact a new section to chapter 11-10 of the North Dakota Century Code, relating to the salary and the office of the county superintendents of schools; to amend and reenact subsection 1 of section 11-08-08, sections 11-08-10, 11-08-13, sections 15-22-01, 15-22-02, 15-22-04, 15-22-09, and 15-22-25 of the North Dakota Century Code, relating to election, duties, and joint sharing by counties of county superintendents of schools; to repeal subsection 5 of section 11-08-06, section 11-09-24, subsection 9 of section 11-10-02, subsection 9 of section 11-10-06, sections 15-22-06, 15-22-08, and 15-22-24 of the North Dakota Century Code, relating to election of the county superintendent of schools, deputies, power of the county superintendent of schools to administer oaths, and contracts for services of the county superintendent of schools; and to provide for transition and an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 11-08-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. On or before the fifteenth day of January, the sheriff, state's attorney, ~~county superintendent of schools~~, and coroner must be appointed, and such officers shall qualify within ten days thereafter.

SECTION 2. AMENDMENT. Section 11-08-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-08-10. Board may appoint officers of adjoining county - Term of office - Compensation. The board of county commissioners may appoint the sheriff, or the state's attorney, ~~and county superintendent of schools~~, or ~~any one or more of such officers~~ both, of an adjoining county to act as the sheriff, or state's attorney, ~~or county superintendent of schools~~ of its county. Any officer of an adjoining county so appointed shall serve for a term of two years and until his successor is appointed and qualified. He shall be eligible to serve in such dual capacity and shall receive, in addition to his salary as an officer of the county of his residence, a sum not exceeding one-half of such salary, to be fixed by the board of county commissioners. The additional salary shall be paid by the county in the same manner as other county officers are paid.

SECTION 3. AMENDMENT. Section 11-08-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-08-13. Powers and duties of other officers. The sheriff, state's attorney, ~~county superintendent of schools,~~ and coroner appointed under this chapter shall perform the duties and exercise the powers conferred by law upon them.

SECTION 4. A new section to chapter 11-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

County superintendent of schools - Officer. For purposes of sections 11-10-10, 11-10-15, and 11-10-20, the county superintendent of schools employed by the board of county commissioners is an officer of the county.

SECTION 5. AMENDMENT. Section 15-22-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-22-01. Election - Term of office County superintendent of schools. There shall be elected in The presidents of the school boards of school districts whose headquarters are located within each organized county, at the same time as state officials are elected, a shall select a candidate to serve as county superintendent of schools. The presidents shall submit the name of the candidate selected to the board of county commissioners for approval. If the board of county commissioners does not approve the candidate, the presidents shall submit the name of another candidate. This process must continue until the board of county commissioners approves a candidate. The candidate approved by the board of county commissioners shall serve as the county superintendent of schools whose term of office shall be four years, commencing on the first Monday in January following his election, and until his successor is elected and qualified. The candidate selected shall serve as county superintendent of schools until the candidate resigns or is discharged by the board of county commissioners at the request of a majority of the presidents of the school boards within the county in the manner provided for discharge of superintendents pursuant to section 15-47-38.1. The presidents of the school boards in the county shall perform the same functions as the school board in section 15-47-38.1 with regard to evaluations, renewals, or discharges of county superintendents of schools.

SECTION 6. AMENDMENT. Section 15-22-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-22-02. Qualifications. The county superintendent of schools shall must be a qualified elector under the general laws of the state, a bachelor degree graduate of a regional or nationally accredited college or university approved for teacher education, shall must hold a valid teacher's certificate, and successful experience in teaching in an approved elementary or secondary school. Be it further provided that this This section shall is not be retroactive but that anyone serving as county superintendent on July 1, 1957, shall show evidence annually of work toward a bachelor degree in teacher education.

SECTION 7. AMENDMENT. Section 15-22-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-22-04. Salary of county superintendent of schools. The county superintendent of schools, for official services rendered, shall receive a salary determined as provided in section 11-10-10. If a county superintendent of schools is employed by more than one county, the combined

population of the counties must be taken into consideration for determining the county superintendent's salary under section 11-10-10.

SECTION 8. AMENDMENT. Section 15-22-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-22-09. Duties in general. The county superintendent of schools shall have the general superintendence of the schools in the county except those in districts which employ a district superintendent of schools and shall exercise such:

1. Receive and transmit to the superintendent of public instruction annual school district financial reports described in subsection 17 of section 15-29-08, annual school district personnel reports, annual school district enrollment and average daily membership reports described in section 15-40.1-09, biennial school census reports described in section 15-47-13, and other reports required by the superintendent of public instruction.
2. Assist in the planning, coordinating, and providing of all education and related services to each school district.
3. Decide all matters in controversy in the administration of school laws or appealed to the county superintendent of schools as provided in section 15-22-17.
4. Promote the maximum amount of coordination and cooperation among the school districts and the multidistrict special education units within the jurisdiction of the county superintendent of schools for the purposes of encouraging and making the school districts efficient and maximizing the educational opportunities for all students.
5. Assist school districts in taking optimum advantage of any incentive programs administered by the superintendent of public instruction.
6. Exercise other powers and perform such other duties as are prescribed by law.

SECTION 9. AMENDMENT. Section 15-22-25 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-22-25. Biennial plan required - Two or more counties or parts thereof may have a common county superintendent of schools - Petition by electors and formulation of plan - Approval - Reinstatement - Appeals. Whenever five percent of the qualified electors of a county or part thereof, as determined by the vote cast for the office of governor at the last general election at which such office was voted upon, shall sign and file a petition setting forth the areas with the county auditor of such county requesting that a county superintendent be elected by two or more contiguous counties or parts thereof to perform the functions of such office for such counties, the county auditor shall transmit a certified copy of such petition to the county auditors of the counties set forth in such petition. Upon receiving such petitions the boards of county commissioners of each county affected by said petition shall, either by joint action or upon a resolution passed by a majority of each board, formulate a plan for a county superintendent of

schools to serve the counties or parts thereof designated by such plan. Alternatively, and without the need of receiving petitions, the board of county commissioners of any county may, by resolution, formulate a plan to discontinue the office of the superintendent of schools of the county or parts thereof and combine with another county or counties or parts thereof for the election of a county superintendent of schools to perform the functions of such office for the counties or parts thereof involved. The county superintendent of schools shall be elected for a term of four years and serve as the county superintendent of schools for the counties or parts thereof designated by such plan. In formulating such plan, the board of county commissioners shall consult with school board presidents and the other boards of county commissioners of counties or parts thereof affected by such plan. Such plan shall encompass all necessary provisions relating to location and sharing of costs of the office so established, and the boards of county commissioners shall be authorized to expend funds of the several counties or parts thereof pursuant to such plan. By joint action or upon a resolution passed by a majority of each board, the boards of county commissioners shall call a public hearing by publishing a notice in the official newspaper in each county at least fourteen days prior to the date of hearing on the proposed plan. Pursuant to such public hearing such plan shall be submitted to the state board of public school education for approval or disapproval. Upon approval by the state board of public school education, the plan shall be submitted by the county auditor to a vote of the qualified electors in each county or parts of a county at an election held prior to July first preceding the expiration of the current term of office of county superintendent of schools. If a majority of the votes cast in each county or parts of a county be in approval, the plan shall go into effect with the beginning of the next term of office for the county superintendent of schools, provided the remaining part or parts of the county are embraced in a similar plan with another county. The county auditor of each county or parts thereof shall place the office on the regular no-party ballot. The canvassing of votes, certifying of nominations, and certifying of elections for any county superintendent elected under the provisions of this section shall be carried out in the same manner as for candidates for the legislative assembly.

Whenever five percent of the qualified electors of the county or parts thereof, as determined by the vote cast for the office of governor at the last general election at which such office was voted upon, shall sign and file a petition with the county auditor of the county involved requesting that a separate county superintendent be elected by each county, or when directed by the joint action or by resolutions passed by a majority of each board involved, the county auditor of each county involved in the plan for a combined county superintendent of schools shall submit the plan to a vote of the qualified electors in each county or parts of a county at an election held prior to July first preceding the expiration of the current term of office of the county superintendent of schools. If a majority of the votes cast in each county or parts of a county approves the plan, the plan shall remain in effect. If a majority of the votes cast in each county or parts of a county reject the plan, the plan shall be discontinued with the beginning of the next term of office for the county superintendent of schools and the office of county superintendent of schools shall be reinstated as it existed prior to formulation of the plan by the county commissioners.

1. The board of county commissioners of two or more counties may agree to jointly employ a county superintendent of schools to perform the functions of the office for the counties involved. Any county

which has less than one thousand persons over five and under eighteen years of age, as determined by the superintendent of public instruction for the previous school year, must combine with another county or counties for the purpose of jointly employing a county superintendent of schools. The board of county commissioners of such a county shall develop a plan to cooperate with another county or counties to employ a county superintendent of schools. If the board of county commissioners of each county cannot agree to share a county superintendent of schools, the superintendent of public instruction may require a county to participate in a plan to jointly employ a county superintendent of schools. Any plan to share a county superintendent of schools must be approved by a majority of the presidents of the school boards of each county affected by the plan and must be confirmed by the superintendent of public instruction. If a majority of the presidents of the school boards in each county cannot agree to the plan, both the presidents of the school boards of the counties affected and the boards of county commissioners of the counties affected shall submit a plan to the superintendent of public instruction for resolution. The decision of the superintendent may be appealed as provided in subsection 3. The plan must describe the amount and quality of educational services to be provided to school districts in the counties by the county superintendent of schools. The plan must be reviewed, and amended if necessary, by the boards of county commissioners and submitted to the presidents of the school boards for approval and to the superintendent of public instruction for confirmation biennially. The superintendent of public instruction may exempt a county from jointly employing a county superintendent of schools if the superintendent determines that, due to the geographic size of the county or the duties required of the county superintendent of schools in that county, sharing a county superintendent of schools would not be feasible. Each county jointly employing a county superintendent of schools must share the salary and other expenses attributable to the county superintendent of schools. The costs must be apportioned among the counties sharing the county superintendent of schools based on the number of persons over five and under eighteen years of age in each county.

2. The board of county commissioners of any county that elects not to share a county superintendent of schools with another county, or that has been exempted from sharing a county superintendent of schools by the superintendent of public instruction, must submit a plan biennially to the school boards of the school districts located within the county. The plan must describe the amount and quality of educational services to be provided to school districts in the county by the county superintendent of schools. The plan is approved if a majority of the presidents of the school boards in the county approve the plan and the plan is confirmed by the superintendent of public instruction. If a majority of the presidents of the school boards in the county cannot agree to the plan, both the presidents of the school boards and the board of county commissioners shall submit a plan to the superintendent of public instruction for resolution. The decision of the superintendent of public instruction may be appealed as provided in subsection 3.

3. If the superintendent of public instruction does not confirm a plan that has been approved locally, the superintendent of public instruction shall submit the plan to the state board of public school education for final resolution. A majority of the presidents of the school boards in a county or a board of county commissioners aggrieved by a decision of the superintendent of public instruction may appeal the decision to the state board of public school education. A decision of or resolution by the state board of public school education under this section is final. The superintendent of public instruction may not serve on the board when the board is resolving disputes under this section.

SECTION 10. REPEAL. Subsection 5 of section 11-08-06, section 11-09-24, subsection 9 of section 11-10-06, sections 15-22-06, 15-22-08, and 15-22-24 of the North Dakota Century Code, and subsection 9 of section 11-10-02 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 11. TRANSITION - EFFECTIVE DATE. The term of the county superintendents of schools initially selected and approved pursuant to section 5 of this Act begins on January 1, 1993. Sections 5, 6, and 9 of this Act become effective on July 1, 1992. Sections 1, 2, 3, 4, 7, and 10 become effective on January 1, 1993.

Approved April 10, 1989  
Filed April 11, 1989

## CHAPTER 138

HOUSE BILL NO. 1451  
(Kretschmar)**DISTRICT COURT CLERK FUNDING**

AN ACT to create and enact a new section to chapter 11-17; and to amend and reenact sections 11-10-02, 11-10-06, 11-10-10, 11-10-11, 11-17-05, and 27-01-01.1 of the North Dakota Century Code, relating to clerks of district court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-10-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10-02. Number and election of county officers. Each organized county, unless it has adopted one of the optional forms of county government provided by the code, shall have the following officers:

1. One county auditor.
2. One register of deeds in counties having a population of more than six thousand.
3. One clerk of the district court.
4. One state's attorney.
5. One sheriff.
6. One county judge, except that the board of county commissioners of any two or more counties may enter into an agreement to provide for election of a judge or judges to serve the county courts of the counties entering the agreement.
7. One county treasurer.
8. One coroner.
9. One county superintendent of schools.
10. A board of county commissioners consisting of three or five members as provided in this title.

In counties having a population of six thousand or less, the register of deeds must be ex officio clerk of the district court must be the register of deeds, unless the board of county commissioners adopts a resolution separating the offices no less than thirty days before petitions for nomination to county offices may first be filed for the primary election. For a county which has properly initiated the option and it is funded by the

legislative assembly pursuant to section 5 of this Act, the board of county commissioners may provide for the register of deeds services in any appropriate manner. Counties having a population of six thousand or less and exercising the option provided in section 5 of this Act, may contract with the state court administrator for the provision of shared funding for register of deeds services. In counties having a population of twenty-five thousand or more, the county judge may appoint a clerk of county court. In counties with a population of less than twenty-five thousand, the clerk of district court must be clerk of county court unless the county has properly initiated the option and it is funded by the legislative assembly pursuant to section 5 of this Act, in which case the county judge may determine that the clerk of district court may provide clerk services to the county court or appoint a clerk of county court. The required officers must be chosen by the qualified electors of the respective counties at the general election in each even-numbered year, except the register of deeds, county auditor, treasurer, sheriff, state's attorney, county judge, and clerk of the district court, who shall be chosen in 1966 and every four years thereafter, the members of the board of county commissioners, who shall be chosen in the manner prescribed in section 11-11-02, and the county coroner, who shall be chosen in the manner prescribed in section 11-19.1-03. The clerk of district court elected pursuant to this section is not subject to election in any future general election which occurs after the start of the state biennium after the county has properly initiated the option and the legislative assembly has provided appropriations pursuant to section 5 of this Act.

SECTION 2. AMENDMENT. Section 11-10-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10-06. Bonds of county officers. Before entering upon the duties of their respective offices, the following county officers must be bonded for the faithful discharge of their respective duties in the same manner as other civil officers are bonded and in the following amounts:

1. The county auditor, clerk of the district court, register of deeds, and sheriff, fifteen thousand dollars, except in counties having a population of less than ten thousand, where the amount must be ten thousand dollars.
2. A county commissioner, two thousand dollars.
3. The county coroner, five hundred dollars.
4. The state's attorney, three thousand dollars.
5. The county surveyor, an amount, not to exceed two thousand dollars, as may be determined by the board of county commissioners.
6. The public administrator, not less than ten thousand dollars.
7. The county treasurer, an amount fixed by the board of county commissioners of not less than seventy-five thousand dollars, except in counties having a population of less than ten thousand, an amount of not less than forty thousand dollars. When the total amount of taxes to be collected by the county treasurer in any one year is less than the minimum amount of bond specified in this subsection, the bond may be in a sum equal to the amount of taxes to be collected.



8. A county judge, ten thousand dollars.
9. A county superintendent of schools, five hundred dollars.

When the amount of any bond required under this section is dependent upon the population of a county, the population must be determined as provided in section 11-10-10. The bond for the clerk of a district court which is state funded pursuant to section 5 of this Act must be set by the supreme court.

\* SECTION 3. AMENDMENT. Section 11-10-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10-10. Salaries of county officers.

1. The salary of the county auditor, county treasurer, county superintendent of schools, register of deeds, county judge, clerk of district court, and sheriff shall be regulated by the population in the respective counties according to the last preceding official federal census from and after the date when the official report of such census shall have been published by the director of the census or such other official as may be charged with the duty of making such official publication. Notwithstanding any decreases in population, the salaries paid county officers as of July 1, 1981, reduced by any discretionary salary increase authorized by the county commissioners pursuant to this section, shall be at least the minimum amount payable for that office when filled on a full-time basis in the future.
2. The county treasurer, county superintendent of schools, register of deeds, county auditor, and clerk of district court each shall receive the following annual salary, payable monthly, for official services rendered:
  - a. Fifteen thousand one hundred dollars in counties having a population of less than eight thousand.
  - b. Fifteen thousand five hundred dollars in counties having a population exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.

The compensation for the clerk of a district court which is funded by the state pursuant to section 5 of this Act must be set by the supreme court as a part of the judicial branch personnel system.

3. Repealed by S.L. 1975, ch. 87, § 2.
4. The salaries of the judges of county courts shall be as provided in section 27-07.1-04. The county superintendent of schools shall receive for any trips necessarily made within his county in the performance of school district reorganization duties the same mileage as he receives under the provisions of section 11-10-15.

\* NOTE: Section 11-10-10 was also amended by section 4 of Senate Bill No. 2056, chapter 69, and section 1 of House Bill No. 1602, chapter 139.

The board of county commissioners of any county may, by resolution, increase the salary of any full-time county official provided in this section, if, in the judgment of such board, by reason of duties performed, the official merits the increase. The salary of a county official shall not be reduced during the official's term of office. Any county official performing duties on less than a full-time basis may be paid a reduced salary set by the board of county commissioners. In the event the county has for its employees, a group insurance program for hospital benefits, medical benefits, or life insurance, or a group retirement program, financed in part or entirely by the county, such benefits may be in addition to the salaries payable to county officials.

5. Each county commissioner may receive an annual salary or per diem as provided by resolution of the board, with a maximum of seven thousand five hundred dollars. In addition, there shall be an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15, and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01. As used in this section, the words "official business" shall include statewide meetings of the North Dakota county commissioners association.

If a board shall resolve to pay an annual salary pursuant to this subsection, it shall be paid in monthly installments.

6. Sheriffs shall receive the following annual salary, payable monthly, for official services rendered:
  - a. Seventeen thousand nine hundred dollars in counties having a population with less than eight thousand.
  - b. Eighteen thousand nine hundred dollars in counties having a population exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.
7. State's attorneys in counties having a population exceeding thirty-five thousand, or in other counties where the board of county commissioners has determined by resolution that the state's attorney shall be full time and shall not be an attorney or counsel for any party except the state or county, shall receive the same minimum annual salary paid to a county court judge as provided in section 27-07.1-04 as of January 1, 1985, but the county may increase that amount up to the same salary as a county court judge. State's attorneys not considered full time shall receive an annual salary of at least forty-five percent of the minimum salary paid to a county court judge as provided in section 27-07.1-04 as of January 1, 1985. The increase in salary necessary to meet the minimum may be spread over a two-year period with a minimum of a fifty percent increase for the first year. In addition, the county

may increase that amount, if, in the judgment of such board, by reason of duties performed, the state's attorney merits the increase.

\* SECTION 4. AMENDMENT. Section 11-10-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10-11. Appointment and salary of deputies and clerks. The number and salaries of deputies, clerks, and assistants for the county auditor, county treasurer, sheriff, register of deeds, county judge, and clerk of the district court shall be fixed by a resolution of the board of county commissioners. None of the officers mentioned in this section shall appoint as his deputy any other officer mentioned in this section nor the deputy of any such officer. The board of county commissioners upon written recommendation and approval of the state's attorney may appoint one or more assistant state's attorneys or clerks and fix their compensation in the same manner as in the case of deputies and clerks in other county offices. The work of such assistant state's attorneys shall be assigned by the state's attorney. The number and compensation of deputies, clerks, and assistants for a clerk of district court which is funded by the state pursuant to section 5 of this Act must be set by the supreme court.

SECTION 5. A new section to chapter 11-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

County option for state funding of clerk of district court. The board of county commissioners of any county may initiate the option to transfer responsibility for funding for the clerk of district court to the state by the filing of written notice to the state court administrator before February first of the year prior to the start of the next state biennium, accompanied by:

1. A resolution of the board of county commissioners;
2. A resolution separating the offices of register of deeds and clerk of district court pursuant to section 11-10-02; and
3. A statement of income and expenses of the office of the clerk of court for the prior fiscal year and projected costs of the office for the next biennium.

Following approval by the supreme court, the state court administrator shall include in the comprehensive budget in section 27-01-01.1 all salaries and expenses for the clerk of district court and their deputies and employees for each county initiating the option. If approved by the legislative assembly, all clerks of the district court and their deputies and employees shall become employees of the North Dakota judicial system.

The clerk of district court at the start of the next biennium period may remain as full-time clerk of district court at a salary which is not less than the salary paid to the clerk of district court in the year prior to the start of that biennium period until the clerk retires or resigns. Thereafter, the clerk of district court must be employed by the North Dakota judicial system.

The clerk of district court options must be funded in the order of the date of the approval by the supreme court. If the legislative assembly does

\* NOTE: Section 11-10-11 was also amended by section 1 of Senate Bill No. 2507, chapter 140.

not appropriate funds for the transfer of responsibility for funding for one or more clerks of district court to the state at the next legislative session after the date the county has initiated the option in section 5 of this Act, the state court administrator shall provide written notification to the appropriate boards of county commissioners. The unfunded option counties shall remain in priority order for future legislative action.

SECTION 6. AMENDMENT. Section 11-17-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-17-05. Clerk to keep record of fees - Monthly report to county auditor. The clerk of the district court shall keep a public record of all money received as fees for services rendered as clerk. Within three days after the close of each calendar month and also at the close of the clerk's term of office, the clerk shall file with the county auditor a statement under oath showing the amount of fees received as clerk since the date of the clerk's last report, and within three days thereafter the clerk shall deposit with the county treasurer the total sum of such fees which shall be used for facilities, except fees which the clerk is authorized expressly to retain.

SECTION 7. AMENDMENT. Section 27-01-01.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-01-01.1. Budgeting and financing of the supreme court and district courts. The state court administrator shall submit a comprehensive budget for the supreme court and the district courts to the legislative assembly. An informational copy of the budget shall be delivered to the director of the budget pursuant to section 54-44.1-13. The budget for the district courts shall include all salary and expenses for the district courts, including the juvenile courts, and their employees except the clerks of district courts and their deputies and employees, whose salaries and expenses shall be paid by the counties unless the county has properly exercised its option pursuant to section 5 of this Act. Each county shall provide the district court in that county with adequate chamber, court, and law library quarters, and lights and fuel and appropriate facilities for clerk of court services which are state funded pursuant to section 5 of this Act. Any equipment, furnishings, and law libraries in the control and custody of the district court on January 1, 1980, and any such property acquired from that date until July 1, 1981, shall continue to be in district court's custody and control until the state court administrator determines such items are no longer needed by the court. Any equipment and furnishings in the control and custody of a clerk of district court on the date of the exercise of the county option pursuant to section 5 of this Act, and any such property acquired from that date until the beginning of the next state biennium, shall continue in the district court's custody and control until the state court administrator determines such items are no longer needed by the judicial system. Upon that determination custody and control of the property shall revert back to the county. Each district court law library maintained by the state shall be available for use by the county court in that county.

Approved April 10, 1989  
Filed April 11, 1989

## CHAPTER 139

HOUSE BILL NO. 1602  
(Lindgren, Oban, Shaft)

### COUNTY COMMISSIONERS' SALARIES

AN ACT to amend and reenact subsection 5 of section 11-10-10 of the North Dakota Century Code, relating to salaries of county commissioners; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 5 of section 11-10-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Each county commissioner may receive an annual salary or per diem as provided by resolution of the board, with a maximum of eight thousand two hundred dollars in counties with a population in excess of ten thousand and a maximum of seven thousand five hundred dollars in counties with a population of ten thousand or less. In addition, there shall be an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15, and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01. As used in this section, the words "official business" shall include statewide meetings of the North Dakota county commissioners association.

If a board shall resolve to pay an annual salary pursuant to this subsection, it shall be paid in monthly installments.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 1990.

Approved March 22, 1989  
Filed March 23, 1989

- \* NOTE: Section 11-10-10 was also amended by section 4 of Senate Bill No. 2056, chapter 69, and section 3 of House Bill No. 1451, chapter 138.

## CHAPTER 140

SENATE BILL NO. 2507  
(Senators Axtman, Kelsh)  
(Representative B. Anderson)

### ASSISTANT STATE'S ATTORNEYS

AN ACT to amend and reenact sections 11-10-11 and 11-16-02 of the North Dakota Century Code, relating to assistant state's attorneys.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 11-10-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10-11. Appointment and salary of deputies and clerks. The ~~number and~~ salaries of deputies, clerks, and assistants for the county auditor, county treasurer, sheriff, register of deeds, county judge, ~~and~~ clerk of the district court and state's attorney shall be fixed by a resolution of the board of county commissioners. ~~None~~ Each of the named officers may appoint such deputies, clerks, and assistants, in accordance with the budget, except none of the officers mentioned in this section shall appoint as his deputy any other officer mentioned in this section nor the deputy of any such officer. The board of county commissioners upon written recommendation and approval of the state's attorney may appoint one or more assistant state's attorneys or clerks and fix their compensation in the same manner as in the case of deputies and clerks in other county offices. The work of such assistant state's attorneys shall be assigned by the state's attorney.

SECTION 2. AMENDMENT. Section 11-16-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-16-02. Assistant - Appointment - Duties. The state's attorney may appoint an assistant state's attorney within his county attorneys, who, when ~~he has~~ qualified by filing his the required oath of office, shall have the same powers as, and shall perform any and all duties required of, the state's attorney. The state's attorney shall be responsible, under ~~his~~ the state's attorney's official bond, for any and all acts of such assistant. The work of an assistant state's attorney must be assigned by the state's attorney.

Approved March 28, 1989  
Filed March 28, 1989

\* NOTE: Section 11-10-11 was also amended by section 4 of House Bill No. 1451, chapter 138.

**CHAPTER 141**

HOUSE BILL NO. 1572  
(SkJerven)

**COUNTY "QUICK TAKE" EMINENT DOMAIN**

AN ACT to create and enact a new section to chapter 11-10 of the North Dakota Century Code, relating to immediate possession of property by counties exercising eminent domain authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 11-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Appeal after deposit for taking. When the county seeks acquisition of right of way through eminent domain proceedings authorized by chapter 32-15, the board of county commissioners may make an offer to purchase the right of way and deposit the amount of the offer with the clerk of the district court and thereupon take immediate possession of the right of way as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of property as authorized in this section, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the board of county commissioners, and the matter must be tried at the next regular or special term of court with a jury unless a jury is waived, in the manner prescribed for trials under chapter 32-15.

Approved March 22, 1989  
Filed March 23, 1989

## CHAPTER 142

SENATE BILL NO. 2229  
(Committee on Finance and Taxation)  
(At the request of the Tax Department)

### TAXATION REVISIONS

AN ACT to amend and reenact sections 11-10.1-01, 11-10.1-02, 11-10.1-03, 11-10.1-04, subsection 2 of section 11-10.1-05, sections 11-10.1-07, 11-23-01, 57-02-08.1, 57-06-01, 57-14-01, and 57-61-01.1 of the North Dakota Century Code, relating to the qualifications of a county director of tax equalization, property tax credits for persons sixty-five years of age or older with limited income, the exemption of rural water pipelines from central ad valorem assessment, the duty of a county auditor to correct clerical errors, and the coal severance tax exemption for coal used for space heating purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-10.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10.1-01. County director of tax equalization.

1. Prior to September 1, 1978, the board of county commissioners of each county in this state shall appoint a county director of tax equalization who shall be qualified and experienced in property appraisals, familiar with assessment and equalization procedures and techniques and who is the holder of a current ~~assessor's~~ certificate issued by the state supervisor of assessments. The state supervisor of assessments shall confer with representatives of the county commissioners, city governing bodies, state township officers' association, and personnel at North Dakota state university to establish the minimum requirements for attaining ~~an assessor's~~ the certificate. Any person who is denied such certificate may appeal to the state tax commissioner for a hearing under the provisions of chapter 28-32.
2. The board of county commissioners may, in its discretion, appoint a person on a probationary basis who does not hold a current certificate as provided for in subsection 1, if the board deems such person qualified to act as county director of tax equalization by virtue of education, training, and experience. ~~Such~~ The appointment shall be for a term of not more than three years. Any person receiving ~~such a~~ probationary appointment who does not obtain ~~an assessor's~~ a certificate within three years ~~of his~~ from the appointment, shall not be eligible for reappointment.
3. The county director of tax equalization shall serve at the pleasure of the board of county commissioners and may be employed on a full-



time or part-time basis. Vacancies in the office of county director of tax equalization shall be filled in the same manner as the original appointment.

SECTION 2. AMENDMENT. Section 11-10.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10.1-02. Bond - Oath of office. Each county director of tax equalization ~~and his or~~ deputy, before ~~entering upon his performing the~~ duties of office, shall take and subscribe the oath required of public officials and shall give bond in ~~such~~ a sum as may be prescribed by the board of county commissioners for the faithful performance of the duties of ~~his the~~ office. County directors of tax equalization and their deputies shall be bonded through the state bonding fund.

SECTION 3. AMENDMENT. Section 11-10.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10.1-03. Deputies - Clerks. The county director of tax equalization, within budgetary limits prescribed by the board of county commissioners, may appoint ~~such~~ full-time or part-time deputies and clerks as may be necessary for the proper performance of the duties of ~~his the~~ office and they shall receive such compensation as may be authorized by the board of county commissioners.

SECTION 4. AMENDMENT. Section 11-10.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10.1-04. Payment of expenses. A county director of tax equalization and ~~his any~~ deputies ~~and~~ or clerks shall receive mileage as provided in section 11-10-15 and their actual and necessary traveling expenses at the rate and in the same manner as provided for other county officials. The board of county commissioners shall furnish to the county director of tax equalization and ~~his the~~ staff suitable office space and supplies as may be necessary for the proper discharge of the duties of ~~his the~~ office. The salary and expenses of the county director of tax equalization, ~~his clerks and deputies and any deputies or clerks~~, and the expense of ~~his the~~ office shall be paid from the general fund of the county.

SECTION 5. AMENDMENT. Subsection 2 of section 11-10.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. On January 1, 1981, the county director of tax equalization shall succeed to all the powers and duties of assessors of townships, cities with a population of under five thousand, and unorganized districts within ~~such the~~ county, except that any city with a population of under five thousand or township may, at its option by resolution of its governing body, employ an assessor who shall retain ~~such the~~ powers, duties, and responsibilities of ~~his the~~ office. The resolution of a city or township governing body to employ an assessor shall continue in force until rescinded by the governing body. Notwithstanding any other provision of law to the contrary, the state supervisor of assessments shall confer with representatives of the county commissioners, city governing bodies, state township officers association, and personnel at North Dakota state university to establish minimum requirements for all city and township assessors. ~~Such The~~ standards shall reflect their limited

jurisdiction and need not be equal to those minimum requirements set for county directors of tax equalization. Any courses of instruction included in those minimum requirements for assessors of townships or cities with a population under five thousand shall be conducted by the county director of tax equalization who may cooperate with other county directors of tax equalization in holding joint classes. The county director of tax equalization may call upon the state supervisor of assessments for such any necessary materials and assistance as may be required. No person shall serve as a city or township an assessor of a township or a city with a population under five thousand for longer than twelve months before being certified by the state supervisor of assessments as having met such the minimum requirements. No person may serve as an assessor of a city with a population of five thousand or more for longer than three years before being certified by the state supervisor of assessments as having met the minimum requirements. The expenses and salaries of city and township assessors shall be paid by the city or township exercising this option.

SECTION 6. AMENDMENT. Section 11-10.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10.1-07. Joint county director of tax equalization - County directors may also be city assessors or township assessors. The respective boards of county commissioners of two or more counties may by agreement and resolutions of the respective boards of county commissioners employ a joint county director of tax equalization who shall act as county director of tax equalization for each of the counties participating in such the agreement. The salary and expense of such the joint county director of tax equalization and that of his the office and staff shall be prorated among the counties participating in accordance with the assessed valuation of the counties concerned or upon such any other basis as may be agreed upon by the respective boards of county commissioners. The respective boards of county commissioners, acting jointly, shall appoint such the joint county director of tax equalization on the same basis and in the same manner as a county director of tax equalization may be appointed for a single county. Such The joint county director of tax equalization may be discharged upon the resolution of the board of county commissioners of any county participating in the agreement. Any participating county may withdraw from such the joint agreement upon resolution of the board of county commissioners and by giving written notice to the boards of county commissioners of the other participating counties at least ninety days in advance of July first of the year of withdrawal. The joint county director of tax equalization shall have all the powers and duties of the county director of tax equalization of a single county and shall keep all records of assessment for each county entirely separate from the records of other counties which he or she serves served by the joint county director of tax equalization. The governing boards of a county and of any city, or any township, may by agreement and resolutions of the respective boards employ a joint county director of tax equalization and city or township assessor.

\* SECTION 7. AMENDMENT. Section 11-23-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-23-01. Officers required to furnish commissioners with budget. Every officer in charge of any institution, office, or undertaking supported

\* NOTE: Section 11-23-01 was also amended by section 1 of Senate Bill No. 2136, chapter 153.

wholly or in part by the county shall file with the board of county commissioners on or before July sixth of each year, on suitable blanks prescribed by the state ~~tax commissioner~~ auditor and furnished by the board, an itemized statement of the amounts of moneys which, in the opinion of ~~such~~ the officer, will be required for the proper maintenance, extension, or improvement of ~~such~~ the institution, office, or undertaking for the fiscal year next ensuing. The statement shall explain any difference between the amount of an estimate and the latest appropriation for the same purpose and it shall cite the laws relating thereto. The board or officer having charge of any poor relief which is supported wholly or in part by the county in like manner shall furnish the board of county commissioners with statements of the estimated amounts required from the county for poor relief during the ensuing fiscal year. The board of county commissioners, on or before June first of each year, shall furnish suitable blanks to each officer or person required to make such statement.

\* SECTION 8. AMENDMENT. Section 57-02-08.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-08.1. Property tax credits for persons sixty-five years of age or older with limited income.

1. Any person sixty-five years of age or older in the year in which the tax was levied, or any person who is permanently and totally disabled in the year in which the tax was levied, as certified by a physician selected by the local governing body, with an income of twelve thousand dollars or less per annum from all sources, including the income of any dependent person ~~dependent upon him~~, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, shall receive a reduction in the assessment on the taxable valuation on ~~his~~ the homestead as defined in section 47-18-01, except that this exemption shall apply to any person who otherwise qualifies under the provisions of this subsection regardless of whether ~~or not~~ such the person is the head of a family. The exemption to which any person may be entitled shall be determined according to the following schedule:
  - a. If the person's income is not in excess of six thousand dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a maximum reduction of two thousand dollars of taxable valuation.
  - b. If the person's income is in excess of six thousand dollars and not in excess of seven thousand five hundred dollars, a reduction of eighty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand six hundred dollars of taxable valuation.
  - c. If the person's income is in excess of seven thousand five hundred dollars and not in excess of nine thousand dollars, a reduction of sixty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand two hundred dollars of taxable valuation.

\* NOTE: Section 57-02-08.1 was also amended by section 1 of Senate Bill No. 2083, chapter 693, and section 1 of House Bill No. 1245, chapter 694.

- d. If the person's income is in excess of nine thousand dollars and not in excess of ten thousand five hundred dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of eight hundred dollars of taxable valuation.
- e. If the person's income is in excess of ten thousand five hundred dollars and not in excess of twelve thousand dollars, a reduction of twenty percent of the taxable valuation of the person's homestead up to a maximum reduction of four hundred dollars of taxable valuation.

In no case shall a husband and wife who are living together both be entitled to the credit as provided for in this subsection upon their homestead. The provisions of this subsection shall not reduce the liability of any person for special assessments levied upon ~~his~~ any property. Any person eligible for the exemption herein provided shall sign a statement that the person is sixty-five years of age or older or is permanently and totally disabled, that ~~such the person's~~ income, including that of any dependent, as determined in this chapter does not exceed twelve thousand dollars per annum and that the value of the person's assets, excluding the value of the person's "homestead" as defined in section 47-18-01, does not exceed fifty thousand dollars. The term "dependent" shall include the spouse, if any, of the person claiming the exemption. The assessor shall attach ~~such the~~ statement to the assessment sheet and shall show the reduction on the assessment sheet.

2. Any person sixty-five years of age or older, or any person who is permanently and totally disabled as certified by a physician selected by the local governing body, with an income of twelve thousand dollars or less per annum from all sources, including the income of any dependent person dependent upon him, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, and who rents living quarters shall be eligible for refund for that part of ~~his the~~ annual rent which is deemed by this subsection to constitute the payment of property tax and which is further deemed to represent a burdensome share of his income. For the purpose of this subsection, twenty percent of the annual rent, exclusive of any federal rent subsidy and of charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by the landlord as part of the rental agreement, whether or not expressly set out in the rental agreement, shall be considered as payment made for property tax. When any part of the twenty percent of the annual rent exceeds four percent of the annual income of a qualified applicant, said applicant shall receive a refund from the state general fund for that amount in excess of four percent of ~~his the person's~~ annual income, but ~~such the~~ refund shall not be in excess of two hundred ten dollars. If the calculation for ~~said the~~ refund is less than five dollars, a minimum of five dollars shall be sent to the qualifying applicant. In no case shall a husband and wife who are living together both be entitled to the refund as provided for in this subsection. Each application for refund under this subsection shall be made to the tax commissioner before the first day of June

of each year by the person claiming the refund. The tax commissioner shall certify to the state treasurer the amount of the refund due, if any, and the state treasurer shall issue the refund from the state general fund to the applicant. In no case shall this subsection apply to rents or fees paid by a person for any living quarters, including a nursing home licensed pursuant to section 23-16-01, if that living quarter has been declared exempt from property taxation.

3. All forms necessary to effectuate this section shall be prescribed and designed by the tax commissioner who shall annually distribute an adequate supply of ~~same~~ them to each county director of tax equalization. The county directors of tax equalization shall make these forms available upon request.
4. In determining a person's income for eligibility under this section, the amount of medical expenses actually incurred by that person or any dependent person ~~dependent upon him~~ and not compensated for by insurance or otherwise shall be deducted. For purposes of this section, the term "medical expenses" shall have the same meaning as it has for state income tax purposes.
5. No person whose homestead as defined in section 47-18-01 is a farm structure exempt from taxation under subsection 15 of section 57-02-08 shall receive any property tax credit under this section.

SECTION 9. AMENDMENT. Section 57-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-06-01. Public utilities subject to provisions of chapter. The provisions of this chapter shall govern the assessment of the property of any public utility company defined in section 57-06-02, and of any other company used directly or indirectly in carrying or conveying persons, property, or messages, unless the operative property is subject to a lieu tax in place of a general property tax. This chapter shall not apply to the property of any railway or street railway company, nor to the ~~personal~~ property of a company, the only business of which is providing signaling, paging, or other domestic public land mobile radio service if that service has seven hundred subscribers or less, nor to the fixtures, buildings, and improvements owned by any cooperative or nonprofit corporation organized under the laws of this state and used by it to furnish potable water to its members and customers for uses other than irrigation of agricultural land, and except as otherwise provided in chapter 57-32, shall not apply to the property of any ~~car line~~ express or air transportation company.

SECTION 10. AMENDMENT. Section 57-14-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-14-01. Duty of county auditor upon discovery of clerical error, omission, or false statement in assessment. Whenever the county auditor shall discover that:

1. Taxable real property has been omitted in whole or in part in the assessment of any year or years;

2. Any building or structure has been listed and assessed against a lot or tract of land other than the true site or actual location of such building;
3. The assessor has not returned the full amount of all property required to be listed in the district, or has omitted property subject to taxation; or
4. The assessor has made a clerical error in valuing real property, provided the assessor furnishes the county auditor with a written statement describing the nature of the error, which statement the county auditor shall keep on file,

the ~~assessor~~ county auditor shall proceed to correct the assessment books and tax lists in accordance with the facts in the case and shall correct such error or omission in assessment, and shall add such omitted property and assess it at its true and full value, and if a building or other structure, assessed as real estate in the assessment thereof, is described as though situated upon a lot or tract of land other than that upon which it in fact is situated, the county auditor shall correct the description and add the assessment thereof to the assessment of the lot upon which it actually is located, if the rights of a purchaser for value without actual or constructive notice of such error or omission shall not be prejudiced by such correction, addition, or assessment.

SECTION 11. AMENDMENT. Section 57-61-01.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-61-01.1. Severance tax exemption for coal used for space heating purposes and by the state and political subdivisions. No severance tax shall be imposed on coal used primarily for heating buildings in this state, including the heating of buildings with steam created by the burning of coal, nor shall any severance tax be imposed on coal used by the state or any political subdivision of the state. The coal mine owner or operator shall require the person purchasing the coal for heating of buildings, for resale to consumers for heating of buildings, or for use by the state or any political subdivision of the state to certify the amount of the coal purchased which will be used for heating purposes or by the state or any political subdivision. ~~Coal used by a person, other than the state or a political subdivision of the state, who purchases the coal primarily for a purpose other than the heating of buildings or for the generation of electricity for multiple uses is not exempt from the severance tax.~~

Approved March 28, 1989  
Filed March 28, 1989

## CHAPTER 143

HOUSE BILL NO. 1544  
(Ulmer, Timm, Gerl, A. Hausauer)

### UNCERTIFIED ASSESSOR'S ASSESSMENT REVIEW

AN ACT to create and enact a new subsection to section 11-10.1-05 of the North Dakota Century Code, relating to an ad valorem assessment that is made by an assessor who is not certified as qualified for that assessment jurisdiction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 11-10.1-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Any assessment made by an assessor who is not certified as qualified for that assessment jurisdiction must be reviewed and approved by a certified county director of tax equalization, or a certified city assessor of a city with a population of five thousand or more, prior to the township or city board of equalization annual meeting. The cost of the assessment review must be paid by the township or city having jurisdiction over the assessment at the same rate as paid to a special assessor in section 57-14-08.

Approved March 29, 1989  
Filed March 30, 1989

**CHAPTER 144**

SENATE BILL NO. 2414  
(Olson)

**RURAL PAWNBROKER REGULATION**

AN ACT to create and enact a new subsection to section 11-11-14 of the North Dakota Century Code, relating to pawnbrokers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 11-11-14 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To license, tax, and regulate pawnbrokers outside of municipalities.

Approved March 22, 1989  
Filed March 23, 1989



## CHAPTER 145

HOUSE BILL NO. 1494  
(Representatives Tomac, Graba, Gerhardt)  
(Senators Satrom, Mushik)

### COUNTY PARKS FINANCING

AN ACT to create and enact a new subsection to section 11-11-14, a new section to chapter 11-28, a new subsection to section 57-15-06.7, and a new section to chapter 57-15 of the North Dakota Century Code, relating to powers of the board of county commissioners, the collection of user fees by board of county park commissioners and issuance of evidences of indebtedness in anticipation of user fee revenue, and to provide mill levy authority for support of county parks and recreational facilities; to amend and reenact subsection 4 of section 11-11-14, subsection 2 of section 11-28-05, subsection 1 of section 21-03-06, subsection 6 of section 21-03-07, and section 55-04-01 of the North Dakota Century Code, relating to the acquisition, construction, equipping, and financing of county parks and recreational facilities; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 11-11-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. To liquidate indebtedness of the county control the finances, to contract debts and borrow money, to make payments of debts and expenses, to establish charges for any county or other services, and to control the property of the county.

SECTION 2. A new subsection to section 11-11-14 of the North Dakota Century Code is hereby created and enacted to read as follows:

To acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its name for use and control as provided by law, both real and personal property and easements and rights of way within the county for all purposes authorized by law or necessary to the exercise of any power granted.

SECTION 3. AMENDMENT. Subsection 2 of section 11-28-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Accept on behalf of the county any and all lands and waters and any and all interests, easements, or rights therein, and any gifts, grants, donations, or trusts in money or property, or other assistance, financial or otherwise, from federal, state, municipal, and other public or private sources for park and recreational purposes; ~~and~~ accept and assume the supervision, control, and management of any privately owned property or recreational area,

when the conditions of the offer for its public use are such as in the judgment of the board will be conducive to the best interests of the people of the county and state; and acquire by lease, purchase, gift, devise, or otherwise and hold, own, possess, and maintain real and personal property for parks and recreational purposes.

SECTION 4. A new section to chapter 11-28 of the North Dakota Century Code is hereby created and enacted to read as follows:

Board of county park commissioners authorized to collect user fees and issue evidences of indebtedness in anticipation of user fee revenues.

1. A board of county park commissioners may prescribe and collect user fees for facilities or activities furnished by the county and in anticipation of the collection of such revenues may issue evidences of indebtedness for the purpose of acquiring, constructing, improving, and equipping parks and park and recreational buildings and facilities, and for the purpose of acquiring land for those purposes.
2. Evidences of indebtedness issued under this section are payable, as to principal and interest, solely from all or part of the revenues referred to in this section and pledged for such payment.
3. Notwithstanding any other provision of law, evidences of indebtedness issued under this section are fully negotiable, do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and together with interest thereon and income therefrom, are not subject to taxation by the state of North Dakota or any political subdivision of the state.
4. Evidences of indebtedness issued under this section must be authorized by resolution of the board of county park commissioners and, notwithstanding any other provision of law, may be issued and sold in such manner and amounts, at such times, in such form, and upon such terms, bearing interest as such rate or rates, as may be determined in the resolution.

SECTION 5. AMENDMENT. Subsection 1 of section 21-03-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. By any county:
  - a. To provide county buildings, but all outstanding unpaid bonds for this purpose shall not exceed in amount at any one time five percent of the value of taxable property in such county.
  - b. To construct, enlarge, or repair, or aid in the construction, enlargement, or repair, of bridges within or without the county, but all outstanding unpaid bonds for this purpose shall not exceed in amount at any one time one percent of the value of taxable property in the county.

- c. To provide funds for the original construction and for the improvement and maintenance of highways, but all outstanding unpaid bonds for these purposes shall not exceed in amount at any one time four percent of the value of taxable property in such county.
- d. To provide funds for the construction of solid waste disposal facilities, for the acquisition of real estate for that purpose, for facilities and equipment for the collection of solid wastes, and for facilities and equipment to dispose of waste products.
- e. To provide money for the payment of any deficiency in the fund of any special improvement district whenever the special assessment or taxes levied and collected for the specific improvements are insufficient to pay the principal or interest of any special improvement warrants or bonds issued for the improvement and due and unpaid, but only to the extent of that deficiency.
- f. To provide funds for the acquiring, laying out, equipping, and improving parks and recreational facilities and to acquire land for these purposes.

SECTION 6. AMENDMENT. Subsection 6 of section 21-03-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. The governing body of any county may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section sections 57-15-06.6 and 9 of this Act and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of regional or county correction centers, or parks and recreational facilities; provided, that the initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the county may within sixty days after publication file with the county auditor a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the county, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.

SECTION 7. AMENDMENT. Section 55-04-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-04-01. Authority of state or county to acquire title to lands for park purposes. The state, and each county of the state, is authorized to acquire by purchase, exchange, gift, condemnation, or otherwise the title to any lands or to lease any lands within the same political subdivision for the purpose of establishing a public park or recreational area, or for the

purpose of constructing, maintaining, and operating any water or wildlife conservation project.

SECTION 8. A new subsection to section 57-15-06.7 of the North Dakota Century Code is hereby created and enacted to read as follows:

A county levying a tax for county parks and recreational facilities in accordance with section 9 of this Act may levy a tax not exceeding three mills.

SECTION 9. A new section to chapter 57-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Tax levy for county parks and recreational facilities. A board of county park commissioners established pursuant to chapter 11-28, may levy taxes annually not exceeding the limitation in section 8 of this Act for a fund for the purpose of acquiring real estate as a site for public parks, construction of recreational facilities, renovation and repair of recreational facilities, and the furnishing of recreational facilities. The tax is to be levied, spread, and collected in the same manner as are other taxes in the county. The question of whether the levy is to be discontinued must be submitted to the qualified electors at the next regular election upon petition of twenty-five percent of the qualified electors voting in the last regular county election, if the petition is filed not less than sixty days before the election; provided, however, that the levy may not be discontinued or reduced if such tax is dedicated to the payment of bonds issued pursuant to subsection 6 of section 21-03-07. If the majority of the qualified electors vote to discontinue the levy, it may not again be levied without a majority vote of the qualified electors at a later regular election on the question of relevying the tax, which question may be submitted upon petition as above provided or by decision of the governing board. The levy under this section does not apply to any property located in a city in which park district taxes are levied, unless the governing body of the city in which the property is located consents, by resolution, to the levy.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 10, 1989  
Filed April 11, 1989

## CHAPTER 146

SENATE BILL NO. 2426  
(Senator Keller)  
(Representatives Knell, Gunsch)

### SHERIFF'S FEES

AN ACT to amend and reenact section 11-15-07 of the North Dakota Century Code, relating to fees to be charged by the sheriff.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-15-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-15-07. County fees. The sheriff shall charge and collect the following fees on behalf of the county:

1. For serving a *capias* with commitment of bail and return, twenty-five dollars.
2. For serving a summons, writ of attachment, order of replevin, injunctional order, citation, and other mesne process and making a return thereon, a total of ~~seven ten~~ dollars and ~~fifty cents~~ for each person served at different locations.
3. For making a copy of a summons or order of attachment, two dollars.
4. For making a copy of an injunctional order, two dollars.
5. For serving a subpoena on a witness, each person, ~~seven ten~~ dollars and ~~fifty cents~~.
6. For taking and filing a bond in claim and delivery or any other undertaking to be furnished and approved by the sheriff, ~~seven ten~~ dollars and ~~fifty cents~~.
7. For making a copy of any process, bond, or paper, other than as is herein provided, two dollars per page.
8. For levying a writ of execution and making a return thereof, ~~fifteen~~ twenty-five dollars.
9. For levying a writ of possession with the aid of the county, ten dollars.
10. For levying a writ of possession without the aid of the county, ten dollars.
11. For serving a notice of motion or other notice or order of the court, ~~seven ten~~ dollars and ~~fifty cents~~.

12. For executing a writ of habeas corpus and making a return thereon, ~~five~~ ten dollars.
13. For serving a writ of restitution and making a return thereon, ~~five~~ ten dollars.
14. For calling an inquest to appraise any goods and chattels which he may be required to have appraised, ~~five~~ ten dollars, and each appraiser shall receive ~~twenty~~ fifty dollars to be taxed as costs.
15. For advertising a sale in a newspaper, in addition to the publisher's fees, ~~five~~ ten dollars.
16. For advertising in writing for the sale of personal property, five dollars.
17. For executing a writ or order of partition, ~~five~~ ten dollars.
18. For making a deed to land sold on execution or pursuant to an order of sale, ~~five~~ ten dollars.
19. For issuing a certificate of redemption when property has been redeemed from a sale under execution or upon the foreclosure of a mortgage, ~~five~~ ten dollars.
20. For selling real or personal property under foreclosure of any lien or mortgage by advertisement, ~~fifteen~~ fifty dollars.
21. For boarding prisoners, a sum to be determined by the county commissioners, by resolution in advance, which sum shall be per meal for meals actually served, and shall be not to exceed less than two dollars for breakfast, two dollars and fifty cents for dinner, and three dollars and fifty cents for supper.
- ~~22. For issuing permit or license to carry pistol or revolver, four dollars; and for renewal of such permit or license, two dollars.~~

Approved March 22, 1989

Filed March 23, 1989

## CHAPTER 147

HOUSE BILL NO. 1393  
(Representatives Knell, Gunsch)  
(Senator Keller)

**SHERIFF'S COMMISSIONS**

AN ACT to amend and reenact section 11-15-08 of the North Dakota Century Code, relating to commissions collected by sheriff in certain proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-15-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-15-08. Commissions collected by sheriff.

1. Except as ~~otherwise~~ provided in section 11-15-09, the sheriff is entitled to collect commissions on all moneys received and disbursed by ~~him~~ the sheriff on an execution, order of sale, order of attachment, requisition in claim and delivery, or decree for the sale of real or personal property, as follows:
  - 1- a. On the first ~~four hundred dollars~~, ~~three percent~~.
  - 2- ~~On all moneys in excess of four hundred dollars and not exceeding one thousand dollars, two percent~~ fifty dollars.
  - 3- b. On all moneys in excess of one thousand dollars, one percent.
2. ~~in all cases where~~ If personal property is taken by the sheriff on an execution, under a requisition in claim and delivery, or under a writ of attachment and applied in satisfaction of the debt without sale, the sheriff is entitled to collect the percentage commission specified in ~~this section~~ subsection 1 based upon the appraised value of the property. The sheriff shall deliver the commissions to the county treasurer ~~in accordance with~~ under section 11-15-14.

Approved March 14, 1989  
Filed March 15, 1989

## CHAPTER 148

SENATE BILL NO. 2245  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Department of Human Services)

### CHILD AND SPOUSAL SUPPORT

AN ACT to create and enact sixteen new sections to chapter 14-09 of the North Dakota Century Code, relating to support payments and procedures, income withholding for child support enforcement, periodic review of child support orders, and medical support enforcement for child support; to amend and reenact subsection 15 of section 11-16-01, sections 14-09-09.6, 14-09-09.7, 14-09-09.10, 14-09-09.11, 14-09-09.12, 14-09-09.13, 14-09-09.14, subsections 1 and 2 of section 14-09-09.16, sections 14-09-09.17, 14-09-09.19, 14-09-09.21, subsection 1 of section 14-17-04, subsection 2 of section 14-17-05, section 14-17-10, subsection 3 of section 14-17-11, subsection 3 of section 14-17-12, sections 14-17-15, and 50-09-06 of the North Dakota Century Code, relating to spousal support and child support, income withholding for child support enforcement, genetic testing for child support, and assignment of support rights; to repeal sections 14-08-07, 14-08-08, 14-08-09, 14-08-10, and subsection 5 of section 14-17-14 of the North Dakota Century Code, relating to support payments and procedures and judgments or orders for child support; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 15 of section 11-16-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15. Assist the district court in behalf of the recipient of payments for child support or ~~alimony~~ spousal support combined with child support in all proceedings instituted to enforce compliance with a decree or order of the court requiring such payments.

SECTION 2. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Support payments - Payment to court - Transfer of payment to court of recipient's residence - Transfer of proceedings for enforcement of decree - Procedures upon failure to pay.

1. In any action in which a court orders that payments for child support be made, the court shall provide in its order that the payments be paid to the clerk of court, as trustee, for remittance to the obligee. The clerk shall remit the payments within ten working days of receipt unless the address of the obligee is unknown to the clerk. The clerk shall maintain records listing the amount of the payments, the date when the payments must be made, the names and addresses of the parties subject to the order, and



any other information necessary for the proper administration of the order. Upon the filing with the clerk of court of notice of the assignment of support rights to a state, payments must be credited and transmitted pursuant to the assignment and in conformity with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651, et seq., as amended]. The parties subject to the order shall immediately inform the clerk of their social security numbers and of any change of address or change of any other condition which may affect the proper administration of this chapter. Whenever there is failure to make the payments as required, the clerk shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district, on a form provided by the judge, to issue a citation for contempt of court against the person who has failed to make the payments and the citation must be served on that person as provided by the North Dakota Rules of Civil Procedure.

2. The court of its own motion or on motion of the state's attorney of the county of venue, the county of the recipient's residence, or the county of the obligor's residence may cause a certified copy of any support order in the action to be transcribed and filed with the clerk of the district court of any county in this state in which the obligee or the obligor may reside from time to time. Hereafter, the provisions of this section apply as if the support order were issued by the district court of the county to which the support order is transcribed. No fee may be charged for transcribing or filing a certified copy of any support order under this section.
3. The clerk of court, at the option of the clerk, may deposit payments received by the clerk under this section in a special trust account in either the Bank of North Dakota or in a banking institution of this state designated as a depository of public funds under chapter 21-04 and make payments from the trust account to the obligee or the clerk may deposit payments received by the clerk under this section with the county treasurer and direct their disbursement under chapter 11-14.

SECTION 3. AMENDMENT. Section 14-09-09.6 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.6. Voluntary income withholding for support - Limitations. An obligor may execute a document voluntarily authorizing income withholding from current or future income due the obligor from an income payor in an amount sufficient to meet any child support obligation imposed by a court or otherwise. An income withholding authorization made under this section is binding on the income payor one week after service upon the income payor by personal service or by certified mail of a true copy of the executed income withholding authorization. The income payor shall deduct the sum or sums specified and pay them as specified by the income withholding authorization and any applicable imposition of a support obligation by a court. In addition, the income payor may deduct a fee of ~~one dollar~~ three dollars per month from the obligor's income to cover expenses involved in transmitting payment. Compliance by an income payor with an income withholding authorization issued under this section discharges the income payor's

liability to the obligor for that portion of the obligor's income. The income payor may not use the income withholding authorization as a basis for any disciplinary action against the obligor.

SECTION 4. AMENDMENT. Section 14-09-09.7 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.7. ~~Scale of suggested minimum contributions~~ Child support guidelines.

1. The department of human services shall establish ~~a scale of suggested minimum contributions~~ child support guidelines to assist courts in determining the amount that a parent should be expected to contribute toward the support of the child under this section. The ~~scale~~ guidelines shall:
  - a. Include consideration of gross income.
  - b. Authorize an expense deduction for determining net income.
  - c. Designate other available resources to be considered.
  - d. Specify the circumstances which should be considered in reducing support contributions on the basis of hardship.
2. The department shall accept and compile pertinent and reliable information from any available source in order to establish ~~a minimum scale of suggested contributions~~ the child support guidelines. Copies of the ~~scale~~ guidelines shall be made available to courts, state's attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of this chapter.
3. ~~The court shall consider the scale of suggested minimum contributions in making a determination of the amount of payment for child support~~ There is a rebuttable presumption that the amount of child support which would result from the application of the child support guidelines is the correct amount of child support. The presumption may be rebutted if a preponderance of the evidence in a contested matter establishes that factors not considered by the guidelines will result in an undue hardship to the obligor or a child for whom support is sought. A written finding or a specific finding on the record must be made if the court determines that the presumption has been rebutted.
4. ~~The department shall review the child support guidelines periodically, as the department determines necessary, but at least once every four years, to ensure that the application of the guidelines results in the determination of appropriate child support award amounts.~~

\* SECTION 5. AMENDMENT. Section 14-09-09.10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

\* NOTE: Section 14-09-09.10 was also amended by section 9 of Senate Bill No. 2056, chapter 69.

14-09-09.10. Definitions. For the purposes of ~~section 14-09-09.3 and sections 14-09-09.10 through 14-09-09.23~~ this chapter, unless the context or subject matter otherwise requires:

1. "Child support" means payments for the support of children and combined payments for the support of children and spouses or former spouses, however denominated, if the payment is required by the order of a court or other governmental agency having authority to issue such orders.
2. "Child support agency" means the county social service board, any combination of county social service boards, or any entity created by a county social service board or any combination of county social service boards, in execution of the county social service board's duties under subsection 5 of section 50-09-03.
3. "Delinquent" means a situation which occurs on the first working day after the day upon which a child support payment was identified as due and unpaid, and the total amount of unpaid child support is at least equal to the amount of child support payable in one month.
- ~~2-~~ 4. "Disposable income" means gross income less deductions required by law for taxes and social security.
5. "Health insurance" includes fees for service, health maintenance organization, preferred provider organization, comprehensive health association plan, accident and health insurance policies, and other types of coverage under which major medical coverage may be provided in a policy or contract which may legally be sold in this state.
- ~~3-~~ 6. "Income" means any form of payment, regardless of source, owed to an obligor, including, but not limited to, ~~an~~ any earned, unearned, taxable or nontaxable income, workmen's compensation, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.
- ~~4-~~ 7. "Income payor" means any person, partnership, firm, corporation, association, political subdivision, or department or agency of the state or federal government owing income to an obligor and includes an obligor if the obligor is self-employed.
- ~~5-~~ 8. "Obligee" means a person including a state or political subdivision to whom a duty of support is owed.
- 6- 9. "Obligor" means any person owing a duty of support.
- ~~7-~~ 10. "Public authority" means the department of human services in execution of its duties pursuant to subsection 12 of section 50-09-02.

SECTION 6. AMENDMENT. Section 14-09-09.11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.11. Income withholding order. When a judgment or order requires the payment of child support, ~~or the payment of alimony and child support,~~ it may be enforced by an income withholding order, as provided in ~~section 14-09-09.3 and sections 14-09-09.10 through 14-09-09.23~~ this chapter, in addition to any other remedies provided by law.

SECTION 7. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Immediate income withholding.

1. Except as provided in subsection 2, each judgment or order which requires the payment of child support, issued or modified on or after January 1, 1990, subjects the income of the obligor to income withholding, regardless of whether the obligor's support payments are delinquent.
2. If a party to a proceeding, who would otherwise be subject to immediate income withholding under subsection 1, demonstrates, and the court finds that there is good cause not to require immediate withholding, or if the parties, including any assignee of support rights, reach a written agreement that provides for an alternative arrangement for assuring the regular payment of child support, the court need not subject the income of the obligor to immediate withholding.

SECTION 8. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Requests by obligee for income withholding - Approval - Procedures and standards.

1. An obligee may apply to a child support agency for approval of an income withholding request. The income of the obligor becomes subject to income withholding on the date an approved request is made.
2. The public authority shall establish procedures and standards for the approval of obligee requests for income withholding. The standards established must include consideration of:
  - a. An obligor's threat to discontinue child support payments; and
  - b. An obligor's having made child support payments sufficient to avoid a delinquency, but insufficient to conform to the ordered amount.
3. Upon application of an obligee requesting income withholding, the child support agency shall promptly approve or disapprove the request. Each approved request must be transmitted promptly to the clerk of court.

SECTION 9. AMENDMENT. Section 14-09-09.12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.12. Provision of notice of impact of section 14-09-09.3 and sections 14-09-09.10 through 14-09-09.23 income withholding law to obligors. Each judgment or order issued by a court in this state which includes an order for support of minor children must include a statement that a delinquency in payment of the support due or the approved request of the obligee will result in an income withholding order being issued in accordance with section 14-09-09.3 and sections 14-09-09.10 through 14-09-09.23 this chapter.

SECTION 10. AMENDMENT. Section 14-09-09.13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.13. Procedure - Notice to obligor. If immediate income withholding under section 7 of this Act has not been implemented and an obligor is delinquent, or an obligee's request for income withholding is approved, the clerk of court shall serve a notice and a copy of this chapter on the obligor by first-class mail at the obligor's last known address. The notice must state:

1. That the obligor is delinquent in the payment of child support or a request for withholding has been made by the obligee and approved by a child support agency, as the case may be, and the obligor is therefore subject to an income withholding order on all income.
2. The amount of child support owed and the amount of arrearage, if any.
3. The total amount of money that will be withheld by the income payor from the obligor's income and that the amount is the sum of both of the following:
  - a. The obligor's current monthly support obligation.
  - b. The amount the obligor is ordered to pay toward any outstanding arrearage, or if no order to repay an arrearage exists, then an amount equal to twenty percent of the obligor's current support obligation, if any, or equal to the most recent monthly support obligation if there is no current support obligation, for application towards any arrearage subject to the limitations of section 14-09-09.16.
4. That the income payor may withhold an additional sum of one dollar three dollars to cover the income payor's expenses.
5. That if not contested pursuant to section 14-09-09.14, the income withholding order will be issued immediately, without further order of the court.
6. That the obligor may contest the issuance of the income withholding order by filing a written request for hearing within ten days of the date of the notice made under this section.

SECTION 11. AMENDMENT. Section 14-09-09.14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.14. Hearing upon obligor's request.

- 1. If the obligor files a request for a hearing within ten days of the date of the notice made pursuant to section 14-09-09.13, the court shall hold a hearing within ten working days after the date of the request. If at the hearing the obligor establishes:
  - a. In a case where withholding would be based on an alleged delinquency, that there has been a mistake in the identity of the obligor; or
  - b. In a case where an approved request for withholding has been made by the obligee, that the approval of the request constituted an abuse of discretion;

the court may order that no income withholding order issue. If at the hearing the obligor establishes that there is an overstatement in the amount of support stated to be owed by the obligor, the court may amend the amount to be withheld. In the absence of a finding of a mistake of fact in a case where withholding would be based on an alleged delinquency, or in the absence of an abuse of discretion in the approval of an obligee's request for withholding, the court shall order that the income withholding order issue. Payment of overdue support after issuance of notice under section 14-09-09.13 may not be the basis for an order that no income withholding order issue.

- 2. An obligor is not precluded, by subsection 1, from seeking appropriate relief from a judgment or order affecting a child support obligation nor is the court precluded from granting such relief. An obligor's request for such relief, whether made by motion under rule 60(b) of the North Dakota Rules of Civil Procedure or otherwise, may not be considered during the hearing described in subsection 1.

SECTION 12. AMENDMENT. Subsections 1 and 2 of section 14-09-09.16 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- 1. That the obligor is delinquent in the payment of support or a request for withholding has been made by the obligee and approved by the child support agency, as the case may be, and that the income payor is therefore required to withhold a stated sum from the obligor's income at the time the obligor is paid for transmittal to the clerk of court within ten days of the date the obligor is paid.
- 2. That the income payor may also withhold and retain an additional sum of ~~one dollar~~ three dollars from the obligor's income to cover expenses involved in transmitting payment.

SECTION 13. AMENDMENT. Section 14-09-09.17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.17. Amendment - Termination of income withholding order. Upon amendment, or termination, ~~or stay~~ of an income withholding order, the

clerk of court shall send appropriate notice to the income payor. An income withholding order is to be amended by the clerk when the total amount of money to be withheld is changed by elimination of arrearages or by court-ordered change in amount of child support. An income withholding order is to be terminated when the duty to support ceases and all child support arrearages have been paid. ~~An income withholding order may be stayed by the clerk of court when the location of the obligee is unknown to the clerk, preventing transmittal of the support.~~

SECTION 14. AMENDMENT. Section 14-09-09.19 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.19. Interstate income withholding - Duties of the ~~agency~~ public authority upon receipt of request from other state.

1. Upon receipt of a support order of another state with the documentation specified in subsection 2 of this section from a child support agency of another state, the public authority shall file the order and documentation with a clerk of district court of any county in which the obligor resides or derives income.
2. All of the following documentation is required for the filing of a support order of another state for issuance of an income withholding order:
  - a. A certified copy of the support order with all modifications.
  - b. A certified copy of an income withholding order, if any, in effect.
  - c. A copy of the portion of the income withholding statute of the state which issued the support order which states the requirements for obtaining income withholding under the law of that jurisdiction.
  - d. A sworn statement of the obligee or assignee of the obligee or a certified statement of the clerk of court of the arrearages, if any, the obligee's approved request for withholding, if such a request has been made and approved, a certified statement that the circumstances in the case require immediate withholding under the laws of the state filing the support order, and any assignment of support rights.
  - e. The name, address, and social security number of the obligor, if known.
  - f. The name and address of the employer or other income payor of the obligor upon whom the income withholding order is to be served.
  - g. The name and address of the agency or person to whom the payments collected by income withholding are to be transmitted.

SECTION 15. AMENDMENT. Section 14-09-09.21 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.21. Interstate income withholding - Hearing upon request of obligor. If the obligor files a request for hearing within ten days of the date of the notice made pursuant to section 14-09-09.20, the court shall hold a hearing within ten working days of the date of the request. At the hearing contesting the proposed income withholding order, the documentation filed with the court, pursuant to section 14-09-09.19, shall constitute prima facie proof, without further proof or foundation, that the support order is valid, that the amount of current payments and arrearages, if any, is as stated, that a request for withholding by an obligee has been made and approved, or that the circumstances of the case require immediate withholding under the laws of the state filing the support order; and that the obligee would be entitled to income withholding under the law of the state which issued the support order. If, at the hearing, the obligor establishes that there has been a mistake in the identity of the obligor or, an overstatement of the amount of support stated to be owed by the obligor, that the obligee's request for withholding was not an approvable request under the laws of the approving state or that the circumstances of the case do not require immediate withholding under the laws of the state filing the support order, the court may order that no income withholding order issue. In the absence of a finding of mistake of fact, the court shall order that the income withholding order issue. Payment of overdue support after issuance of notice under section 14-09-09.20 may not be the basis for an order that no income withholding order issue. Issuance of an income withholding order does not confer jurisdiction on the courts of this state for any purpose other than issuance and enforcement of income withholding orders.

SECTION 16. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Periodic review of child support orders.

1. The public authority shall establish standards to determine that a child support order being enforced by the child support agency should be reviewed. If required to do so in order to secure approval by federal officials charged with administration of title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq., as amended], the public authority shall make those standards a part of a plan indicating how and when child support orders are to be periodically reviewed and adjusted.
2. If the child support agency determines, at the request of the obligor or the obligee, or on its own motion, that, pursuant to the standards described in subsection 1, a child support order being enforced by the child support agency should be reviewed, the child support agency shall initiate a review of such order and, if the order provides for child support payments in an amount less than eighty-five percent of the amount that would be required by child support guidelines established under subsection 1 of section 14-09-09.7, shall seek an amendment of the order. The court shall order the amendment of the child support order to conform the amount of child support payment to that required under the child support guidelines unless the presumption that the correct amount of child support would result from the application of the child support guidelines is rebutted.

SECTION 17. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:



Periodic review of child support orders.

1. Each child support order must be reviewed by the child support agency not less than thirty-six months after the establishment of the order or the most recent review of the order unless:
  - a. In the case of an order with respect to which there is in effect an assignment under sections 50-09-06 or 50-09-06.1, subsection 2 of section 50-24.1-02, or section 50-24.1-02.1, the child support agency has determined that a review is not in the best interests of the child and neither the obligor nor the obligee has requested review; or
  - b. In the case of any other order neither the obligor nor the obligee has requested review.
2. If, upon review, the child support agency determines that the order provides for child support payments in an amount less than eighty-five percent of the amount that would be required by the child support guidelines established under subsection 1 of section 14-09-09.7, the child support agency shall seek an amendment to the order. The court shall order the amendment of the child support order to conform the amount of child support payment to that required under the child support guidelines unless the presumption that the correct amount of child support would result from the application of the child support guidelines is rebutted.

SECTION 18. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Notice of periodic review of child support orders.

1. The child support agency shall provide written notice that a child support order being enforced by the child support agency may be subject to review under section 16 or section 17 of this Act. The notice may be sent by first-class mail to the obligor and the obligee, at the addresses they have most recently provided to the child support agency, at least thirty-five days before the commencement of the review.
2. The notice to the obligor must inform the obligor of the duty to furnish the information required by section 19 of this Act and that a failure to furnish the required information may result in the entry of an order compelling the furnishing of the information. The notice must also inform the obligor that the review determination will be mailed to the obligor following the review. The notice must be accompanied by a copy of the income withholding statutes and an income report form, together with instructions for the accurate completion of the income report form.

SECTION 19. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Obligor's duties upon review - Failure to provide information.

1. The obligor shall provide information to the child support agency concerning the obligor's income, which is sufficient to accomplish

the review, no later than five working days before the date of review. The information must be furnished by:

- a. Providing an income report, in the form and manner required by the child support agency, accurately completed and attested to by the obligor;
  - b. Providing a verified copy of the latest income tax return, filed with the internal revenue service or any state official administering a state income tax, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of the review; or
  - c. Providing a written authorization by which the child support agency may secure a verified copy of the latest income tax return, filed with the tax commissioner, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of review.
2. If information concerning the obligor's income sufficient to accomplish the review has not been received by the child support agency by the fifth working day before the date of review, the child support agency shall provide to the tax commissioner an affidavit stating the obligor's name and address, that a review of the obligor's child support obligation is pending, that notice requesting income information has been given as required by law, and that the required information has not been furnished on a timely basis. Notwithstanding the provisions of section 57-38-57 or other confidentiality statutes, upon receipt of an affidavit provided for in this subsection, the tax commissioner may provide to a child support agency a verified copy of the latest income tax return, filed with the office of the commissioner, which reports the obligor's income. The information obtained by a child support agency from the tax commissioner, in accordance with this section, retains its confidentiality and may only be used by a child support agency in the pursuit of its child support collection duties and practices. The tax commissioner may require a child support agency to make assurances, satisfactory to the commissioner, that the agency has the ability to comply with this subsection.
3. If information concerning the obligor's income sufficient to accomplish the review has not been timely furnished by the obligor and is not available from the office of the tax commissioner, the child support agency may apply to the court for an order compelling the obligor to furnish information sufficient to accomplish the review.

SECTION 20. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Notice of review determination.

1. Following review, the child support agency shall promptly provide written notice of its determination on review. The notice may be sent by first-class mail to the obligor and the obligee, at the addresses they have most recently provided to the child support agency.

2. If the child support agency has made a determination that no amendment to the amount of child support should be sought, the notice must inform the obligor and the obligee of the right of each to challenge that determination by seeking an amendment to the amount of child support, from the court, at any time before the termination of the support order.
3. If the child support agency has made a determination to seek an amendment in the amount of child support, the notice must be mailed at least thirty-five days before the date of a hearing on a motion for amendment made by the child support agency under section 16 or section 17 of this Act, and must inform the obligor and the obligee of the right of each to challenge that determination by opposing that amendment before the court. The notice to the obligor must be accompanied by:
  - a. A proposed modification of the child support order to provide for payment of child support in the amount required under the child support guidelines;
  - b. A document by which the obligor may consent to the proposed modification; and
  - c. An address and telephone number which the obligor may contact to receive information from or schedule a meeting with representatives of the child support agency.

SECTION 21. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Motion for amendment of amount for child support - How made. Upon a determination by a child support agency, made under section 16 or section 17 of this Act, that it must seek amendment of a child support order, the child support agency may file and serve a motion and supporting documents.

SECTION 22. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Request for review - Notice of right to request review. An obligor or an obligee may request review under section 16 or section 17 of this Act, by applying to the child support agency for child support services, and indicating, in the manner there provided, a desire to have a child support order reviewed. Each judgment or order issued by a court in this state which includes an order for child support must include a statement advising of the right to request a review under this section.

SECTION 23. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Order.

1. Unless the obligee has comparable or better group dependent health insurance coverage available at no or nominal cost, the court shall order the obligor to name the minor child as beneficiary on any health insurance plan that is available to the obligor at no or nominal cost.

2. If the court finds that dependent health insurance is not available to the obligor or the obligee at no or nominal cost, the court may require the obligor to obtain dependent health insurance, or to be liable for reasonable and necessary medical expenses of the child.

SECTION 24. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Eligible child - Coverage to continue. A minor child that an obligor is required to cover as a beneficiary under section 23 of this Act is eligible for insurance coverage as a dependent of the obligor until the child's eighteenth birthday or until further order of the court. Insurance companies and nonprofit health service corporations licensed in this state shall continue coverage of a minor child insured under an accident and health insurance policy or health service contract while the legal custody of the minor child has been given by the court to the obligee to the same extent as the general public is covered as long as the minor child meets all the other usual qualifications for insurability and payment continues on the policy or contract premiums. A determination that legal custody will be with a parent other than a parent who pays policy or contract premiums, or on whose behalf payment of policy or contract premiums is made, may not be a basis for cancellation of the minor child's accident and health insurance policy or health service contract.

SECTION 25. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Authorization to insurer. The signature of the custodial parent of the insured dependent, the obligee, or the obligee's assignee is a valid authorization to the insurer for purposes of processing an insurance reimbursement payment to the provider of the medical services.

SECTION 26. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Application for service. The child support agency responsible for support enforcement shall take necessary steps to implement, modify, and enforce an order for dependent health insurance whenever the children receive aid to families with dependent children or foster care under chapter 50-09 or medical assistance under chapter 50-24.1, or upon application of the obligee to the child support agency and payment by the obligee of any required application fee.

SECTION 27. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Public authority to establish criteria. The public authority shall establish criteria to identify cases involving children who received aid to families with dependent children or foster care under chapter 50-09 or medical assistance under chapter 50-24.1, or where an application to the child support agency has been completed by an obligee and where there is a high potential for obtaining medical support based on:

1. Evidence that health insurance may be available to the obligor at reasonable cost; and

2. Facts that are sufficient to warrant modification of the existing court order to include health insurance coverage for a dependent child.

SECTION 28. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Reasonable cost of health insurance. For purposes of this chapter, health insurance is considered reasonable in cost if it is available to the obligor on a group basis or through an employer or union, regardless of service delivery mechanism.

SECTION 29. AMENDMENT. Subsection 1 of section 14-17-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A man is presumed to be the natural father of a child if:
  - a. He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;
  - b. Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
    - (1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within three hundred days after its termination by death, annulment, declaration of invalidity, or divorce; or
    - (2) If the attempted marriage is invalid without a court order, the child is born within three hundred days after the termination of cohabitation;
  - c. After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
    - (1) He has acknowledged his paternity of the child in writing filed with the division of vital statistics of the state department of health and consolidated laboratories;
    - (2) With his consent, he is named as the child's father on the child's birth certificate; or
    - (3) He is obligated to support the child under a written voluntary promise or by court order;
  - d. While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; ~~or~~

- e. He acknowledges his paternity of the child in a writing filed with the division of vital statistics of the state department of health and consolidated laboratories, which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the division of vital statistics of the state department of health and consolidated laboratories. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted; or
- f. If genetic tests show that he is not excluded and the statistical probability of his parentage is ninety-five percent or higher.

SECTION 30. AMENDMENT. Subsection 2 of section 14-17-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under subdivision d ~~or~~, e, or f of subsection 1 of section 14-17-04.

SECTION 31. AMENDMENT. Section 14-17-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-17-10. Blood Genetic test.

1. The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood genetic tests, including tests of blood or other tissues. The tests shall be performed by an expert qualified as an examiner of blood types genetic data or specimens, appointed by the court.
2. The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiner examiners of blood types genetic data or specimens.
3. In all cases, the court shall determine the number and qualifications of the experts.

SECTION 32. AMENDMENT. Subsection 3 of section 14-17-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Blood Genetic test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity. Verified documentation of the chain of custody of the blood genetic specimens is competent evidence to establish the chain of custody. A verified report obtained from an examiner appointed pursuant to section 14-17-10 shall be admitted at trial unless a challenge to the testing procedures or the results of blood genetic analysis has been made before trial.

SECTION 33. AMENDMENT. Subsection 3 of section 14-17-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. If a party refuses to accept a recommendation made under subsection 1 and ~~blood genetic~~ tests have not been ~~taken administered~~, the court shall require the parties to submit to ~~blood genetic~~ tests, if practicable. Thereafter the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

SECTION 34. AMENDMENT. Section 14-17-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-17-15. Costs. The court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pretrial proceedings, including ~~blood genetic~~ tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by the county social service board of the county in which the child resides or is found.

SECTION 35. AMENDMENT. Section 50-09-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-09-06. Application for assistance - Assignment of support rights. Application for aid to a dependent child under this chapter must be made to the county agency in the manner and form prescribed by the state agency. The application must contain such information as the state agency may require, and the action of the state agency in approving and granting assistance or in disapproving and denying assistance shall be final and binding on the county agency. An applicant application for assistance under this chapter is deemed to have assigned create and effect an assignment of all rights of support, which exist or may come to exist for the benefit of the child, to the state agency and county agency at the time of application all rights to child support from any other person the applicant may have in his own behalf or in behalf of any other family member for whom application is made. The assignment:

1. Is effective as to both current and accrued child support obligations.
2. Takes effect upon a determination that the applicant is eligible of eligibility for assistance under this chapter.
3. Terminates when an applicant ceases to receive assistance under this chapter, except with respect to the amount of any unpaid support obligation accrued under the assignment.

SECTION 36. REPEAL. Sections 14-08-07, 14-08-08, 14-08-09, 14-08-10, and subsection 5 of section 14-17-14 of the North Dakota Century Code are hereby repealed.

SECTION 37. EFFECTIVE DATE. Sections 16 and 18 of this Act become effective on October 1, 1990, and section 17 of this Act becomes effective on October 1, 1993.

SECTION 38. EXPIRATION DATE. Section 16 of this Act is ineffective after October 1, 1993.

Approved April 12, 1989  
Filed April 13, 1989

## CHAPTER 149

SENATE BILL NO. 2389  
(Senators Olson, Stenehjem, J. Meyer)  
(Representatives Wentz, Schneider, Kelly)

## MENTALLY ILL AND CHEMICALLY DEPENDENT COMMITMENT

AN ACT to create and enact a new subsection to section 11-16-01 and a new section to chapter 25-03.1 of the North Dakota Century Code, relating to duties of states attorneys in commitment proceedings and to combination of preliminary and treatment hearings; and to amend and reenact sections 25-03.1-01, 25-03.1-02, 25-03.1-04, 25-03.1-06, 25-03.1-07, 25-03.1-08, 25-03.1-09, 25-03.1-11, 25-03.1-13, 25-03.1-14, 25-03.1-17, 25-03.1-18, 25-03.1-19, 25-03.1-21, 25-03.1-22, 25-03.1-25, 25-03.1-26, 25-03.1-27, subsection 5 of section 25-03.1-30, sections 25-03.1-34, 25-03.1-42, 25-03.1-43, and 25-03.1-46, relating to civil commitment of mentally ill and chemically dependent persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 11-16-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Institute proceedings under chapter 25-03.1 if there is probable cause to believe that the subject of a petition for involuntary commitment is a person requiring treatment.

SECTION 2. AMENDMENT. Section 25-03.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-01. Legislative intent. The provisions of this chapter are intended by the legislative assembly to:

1. Provide prompt evaluation and treatment of persons with serious mental disorders, ~~alcoholism~~, or ~~drug addiction~~ chemical dependency.
2. Safeguard individual rights.
3. Provide continuity of care for persons with serious mental disorders, ~~alcoholism~~, or ~~drug addiction~~ chemical dependency.
4. Encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures.
5. Encourage, whenever appropriate, that services be provided within the community.



SECTION 3. AMENDMENT. Section 25-03.1-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-02. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Alcoholic individual" means an individual who has lost the power of self control, or who exhibits cognitive deficiencies or general confused thinking, or other manifestations of disorientation which show an inability to make judgments about areas of behavior that do not directly relate to the individual's drinking. "Chemically dependent person" means an individual with an illness or disorder characterized by a maladaptive pattern of usage of alcohol or drugs, or a combination thereof, resulting in social, occupational, psychological, or physical problems.
2. "Court" means, except where otherwise indicated, the county court of the county wherein the respondent resides.
3. "Department" means the state department of health and consolidated laboratories pursuant to chapter ~~23-04~~ human services.
4. "Director" means the director of a treatment facility.
5. "Drug addict" means an individual who has a physical or emotional dependence on a drug or drugs which he uses in a manner not prescribed by a physician.
6. "Expert examiner" means a licensed physician, psychiatrist, clinical psychologist, or licensed addiction counselor appointed by the court to examine the respondent. An evaluation of a respondent's physical condition shall be made only by a licensed physician or psychiatrist, an evaluation of a respondent's mental status shall be made only by a licensed psychiatrist or clinical psychologist, and an examination by a licensed addiction counselor shall be limited to whether the respondent is an alcoholic or drug addict chemically dependent.
- ~~7.~~ 6. "Independent expert examiner" means a licensed physician, psychiatrist, clinical psychologist, or licensed addiction counselor, chosen at the request of the respondent to provide an independent evaluation of whether the respondent meets the criteria of a person requiring treatment. An examination by a licensed addiction counselor must be limited to whether the respondent is an alcoholic or drug addict, chemically dependent and whether the respondent is a person requiring treatment.
- ~~8.~~ 7. "Magistrate" means the judge of the appropriate county or juvenile court or a judge assigned by the presiding judge of the judicial district.
- ~~9.~~ 8. "Mental health professional" means:
  - a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.

- b. A social worker with a master's degree in social work from an accredited program.
  - c. A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program.
  - d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse as defined by subdivision c, or an expert examiner ~~as defined by subsection 6.~~
  - e. A licensed addiction counselor.
- ~~10-~~ 9. "Mentally ill person" means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Mentally ill person" does not include a mentally retarded or mentally deficient person of significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior. ~~Drug addiction and alcoholism do~~ Chemical dependency does not per se constitute mental illness, although persons suffering from these conditions that condition may also be suffering from mental illness.
- ~~11-~~ 10. "Person requiring treatment" means ~~either a person-~~
- ~~a-~~ a. ~~Who is suffering from severe mental illness; severe alcoholism; or severe drug addiction. "Severe" means that the disease or addiction is associated with gross impairment of the person's level of adaptive functioning as outlined by axis V of the diagnostic and statistical manual of mental disorders of the American psychiatric association; or~~
  - ~~b-~~ b. ~~Who who is mentally ill; an alcoholic; or drug addict chemically dependent, and there is a reasonable expectation that if the person is not hospitalized treated there exists a serious risk of harm to himself that person, others, or property. "Serious risk of harm" means a substantial likelihood of:~~
    - ~~1-1~~ a. ~~Suicide as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;~~
    - ~~2-2~~ b. ~~Killing or inflicting serious bodily harm on another person; or inflicting significant property damage, as manifested by acts or threats; or~~
    - ~~3-3~~ c. ~~Substantial deterioration in physical health, or substantial injury, disease, or death resulting from based upon recent poor self-control or judgment in providing one's shelter, nutrition, or personal care; or~~
    - d. Substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon acts, threats, or patterns in the person's

treatment history, current condition, and other relevant factors.

- ~~+2-~~ 11. "Private treatment facility" means any facility established ~~pursuant to under~~ chapters 10-19.1, 10-22, and 10-24 and licensed ~~pursuant to under~~ chapter 23-16 or 23-17.1.
- ~~+3-~~ 12. "Public treatment facility" means any treatment facility not falling under the definition of a private treatment facility.
- ~~+4-~~ 13. "Respondent" means a person subject to petition for involuntary treatment.
- ~~+5-~~ 14. "Superintendent" means the state hospital superintendent.
- ~~+6-~~ 15. "Treatment facility" or "facility" means any hospital including the state hospital at Jamestown; or evaluation and treatment facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to persons suffering from a mental disorder; ~~alcoholism;~~ or ~~drug addiction~~ chemical dependency.

\* SECTION 4. AMENDMENT. Section 25-03.1-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-04. Voluntary admission. An application for admission to the state hospital or a public treatment facility for observation, diagnosis, care, or treatment as a voluntary patient may be made by any person who is mentally ill; ~~an alcoholic; or a drug addict; chemically dependent~~ or who has symptoms of such illnesses. An application for admission as a voluntary patient may be made on behalf of a minor who is mentally ill; ~~an alcoholic; or a drug addict; chemically dependent~~ or who has symptoms of such illnesses; ~~by his the minor's parent or legal guardian.~~ The application may be submitted to a public treatment facility or to the state hospital, ~~both each~~ of which ~~shall have~~ has the authority to admit and treat the applicant. Upon admittance, the superintendent or the director shall immediately designate a physician, psychiatrist, clinical psychologist, or mental health professional to examine the patient.

SECTION 5. AMENDMENT. Section 25-03.1-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-06. Right to release on application - Exception - Judicial proceedings. Any person voluntarily admitted for inpatient treatment to any treatment facility or the state hospital shall be orally advised of the right to release and shall be further advised in writing of ~~his the~~ rights under this chapter. A voluntary patient who requests ~~his~~ release shall be immediately released. However, if the superintendent or the director determines that the patient is a person requiring treatment, the release may be postponed until judicial proceedings for involuntary treatment have been held in the county where the hospital or facility is located. The patient must be served the petition within twenty-four hours, exclusive of weekends and holidays, from the time release is requested, unless extended by the magistrate for good cause shown. The treatment hearing shall be held within

\* NOTE: Section 25-03.1-04 was also amended by section 2 of House Bill No. 1038, chapter 335.

~~five seven days, excluding weekends and holidays,~~ from the time the petition is served.

SECTION 6. AMENDMENT. Section 25-03.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-07. Involuntary admission standards. A person may be involuntarily admitted under this chapter to the state hospital or another treatment facility only if it is determined he that the individual is a person requiring treatment ~~as defined by subsection 11 of section 25-03.1-02.~~

SECTION 7. AMENDMENT. Section 25-03.1-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-08. Application to state's attorney or retained attorney - Petition for involuntary treatment - Investigation by qualified mental health professional. Proceedings for the involuntary treatment of an individual may be commenced by any Any person eighteen years of age or over by filing a written petition with the clerk of court shall present the information necessary for the commitment of an individual for involuntary treatment to the state's attorney of the county where the respondent is presently located, or which is the respondent's place of residence, or to an attorney retained by that person to represent the applicant throughout the proceedings. The clerk of court attorney shall assist the person in completing the petition. The petition shall must be verified by affidavit of the applicant and contain assertions that the respondent is the a person requiring the treatment; the facts, in detail, that are the basis of that assertion; the names, telephone numbers, and addresses, if known, of any witnesses to such facts; and, if known, the name, telephone number, and address of the nearest relative or guardian of the respondent, or, if none, of a friend of the respondent. The petition may be accompanied by any of the following:

1. A written statement supporting the petition from a psychiatrist, physician, or clinical psychologist who has personally examined the respondent within forty-five days of the date of the petition.
2. One or more supporting affidavits otherwise corroborating the petition.
- 3- ~~Corroborative information obtained and reduced to writing by the clerk of court; but only when it is not feasible to comply with, or when he considers it appropriate to supplement, the information supplied pursuant to either subsection 1 or 2-~~

In assisting the person in completing the petition, the state's attorney may direct a qualified mental health professional as designated by the regional human service center to investigate and evaluate the specific facts alleged by the applicant. The investigation must be completed as promptly as possible and include observations of and conversation with the respondent, unless the respondent cannot be found or refuses to meet with the mental health professional. A written report of the results of the investigation must be delivered to the state's attorney. Copies of the report must be made available upon request to the respondent, the respondent's counsel, and any expert examiner conducting an examination under section 25-03.1-11. The state's attorney or retained attorney shall file the petition if the information provided by the petitioner or gathered by investigation provides

probable cause to believe that the subject of the petition is a person requiring treatment. A state's attorney who determines there are insufficient grounds for filing a petition may refer the applicant to other community resources. A state's attorney's decision not to institute proceedings may be reviewed under section 11-16-06.

SECTION 8. AMENDMENT. Section 25-03.1-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-09. Review of petition for involuntary treatment - Probable cause established - Respondent notified - Rights — ~~Investigation.~~

1. Upon the filing of a petition for involuntary treatment, the clerk of court shall immediately notify the magistrate who shall review the petition and accompanying documentation to determine whether it complies with requirements of section 25-03.1-08 and whether it establishes probable cause to believe the respondent meets the criteria of a person requiring treatment. If probable cause has not been so established, the petition ~~shall~~ must be dismissed unless an amendment would cure the defect.
2. If probable cause has been established, the magistrate shall cause to be served on the respondent and his nearest relative or guardian or, if none, a friend of the respondent, copies of the petition and supporting documentation. This ~~shall~~ must be accompanied by notice informing the respondent of the procedures required by this chapter ~~and an explanation of the intended uses and possible effects of the investigation mandated in subsection 3.~~ This notice ~~shall~~ must also include notice of the respondent's right to a preliminary and a treatment hearing when in custody ~~pursuant to under~~ section 25-03.1-25 or, if not in custody, the right to a treatment hearing; of ~~his~~ the right to be present at the hearings; of ~~his~~ the right to have counsel prior to the hearings and any court-ordered examination; of ~~his~~ the right to an independent evaluation; and, if the respondent is indigent, of ~~his~~ the right to counsel and to an independent expert examiner, each at the expense of the county which is the respondent's place of residence. If an independent expert examiner is to be appointed, the respondent ~~shall~~ must be given an opportunity to select that examiner.
3. ~~The magistrate shall direct the city, county, or district mental health outreach worker or other qualified person to investigate and evaluate the specific facts alleged unless the respondent is in a facility. The investigation, to be completed as promptly as possible, shall include observations of and conversation with the respondent in his home or other surroundings where he can be found or desires to meet, unless he cannot be found or refuses to meet with the outreach worker. A written report of the results of the investigation shall be delivered to the magistrate. Copies of the report shall be made available upon request to the respondent, his counsel, and any expert examiner conducting an examination pursuant to section 25-03.1-11.~~

SECTION 9. AMENDMENT. Section 25-03.1-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-11. Involuntary treatment - Examination - Report. The respondent ~~shall~~ must be examined within a reasonable time by an expert examiner as ordered by the court. If the respondent is taken into custody pursuant to under the emergency treatment provisions of this chapter, the examination ~~shall~~ must be conducted within twenty-four hours, exclusive of holidays, of custody. Any expert examiner conducting an examination pursuant to under this section may consult with, or request participation in the examination by, any qualified mental health professional, and may include with the written examination report any findings or observations by such mental health professional. This examination report, and that of the independent examiner, if one has been requested, ~~shall~~ must be filed with the court. The report ~~shall~~ must contain:

1. Evaluations of the respondent's physical condition and mental status.
2. A conclusion as to whether the respondent meets the criteria of a person requiring treatment, with a clear explanation of how that conclusion was derived from the evaluation ~~required~~.
3. If the report concludes that the respondent meets the criteria of a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.
4. The signature of the examiner who prepared the report.

If the expert examiner concludes that the respondent does not meet the criteria of a person requiring treatment, the court may without taking any other additional action terminate the proceedings and dismiss the petition. If the expert examiner concludes that the respondent does meet the criteria of a person requiring treatment, or makes no conclusion thereon, the court shall set a date for a preliminary hearing and shall give notice of this hearing to the persons designated in section 25-03.1-12. If the respondent is in custody, the preliminary hearing date must be within ~~seventy-two hours, exclusive of weekends and holidays, seven days~~ of the date respondent was taken into custody through emergency commitment pursuant to under section 25-03.1-25 unless a delay or continuance is concurred in by the respondent or unless extended by the magistrate for good cause shown. If the preliminary hearing is not required, the treatment hearing ~~shall~~ must be held within ~~seventy-two hours seven days~~ of the date the court received the expert examiner's report, not to exceed fourteen days, ~~excluding weekends and holidays~~, from the time the petition was served.

SECTION 10. A new section to chapter 25-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Combination of preliminary and treatment hearings. With the consent of the court, the parties may waive the preliminary hearing and conduct the treatment hearing within the time period set for the preliminary hearing.

SECTION 11. AMENDMENT. Section 25-03.1-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-13. Right to counsel - Indigency - Waiver.

1. Every respondent under this chapter is entitled to legal counsel.
2. Unless an appearance has been entered on behalf of the respondent, the court shall, within ~~seventy two~~ twenty-four hours, exclusive of weekends or holidays, from the time the petition was served filed, appoint counsel to represent the respondent. If an individual has been hospitalized pursuant to the emergency procedure, counsel shall be appointed within twenty four hours, exclusive of weekends or holidays, of such hospitalization.
3. If, after consultation with appointed counsel, the respondent wants to waive his the right to counsel or his the right to any of the hearings provided for under this chapter, he the respondent may do so by notifying the court in writing. This The notification shall must clearly state his the respondent's reasons for the waiver and it shall must also be signed by counsel.
4. If the respondent is indigent, the court shall order that appointed counsel be compensated from county funds of the county which is the respondent's place of residence in a reasonable amount based upon time and expenses.

SECTION 12. AMENDMENT. Section 25-03.1-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-14. Duty of state's attorney in court proceedings. The Unless the petitioner has retained an attorney, the state's attorney for the county in which proceedings under this chapter are initiated shall appear and represent the state in all court proceedings and hearings conducted under section 25-03.1-19. The state's attorney or an attorney retained by the petitioner need not appear at proceedings initiated by the state hospital under sections 25-03.1-23 and 25-03.1-26. The county of residence of the respondent shall bear the cost of the state's attorney in such proceeding proceedings in a reasonable amount based upon time and expenses.

SECTION 13. AMENDMENT. Section 25-03.1-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-17. Involuntary treatment - Preliminary hearing. At the preliminary hearing the magistrate shall review the medical report and the results of the outreach workers' investigation. During the hearing the petitioner and the respondent shall must be afforded an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of any other interested person. The magistrate may receive evidence that would otherwise be inadmissible at a treatment hearing. At the conclusion of the hearing, if the court does not find probable cause to believe that the individual is a person requiring treatment, the petition shall must be dismissed. The person shall must be ordered discharged from the hospital or treatment facility if that person has been detained prior to before the hearing. If the court finds probable cause to believe that the respondent is a person requiring treatment, it must consider less restrictive alternatives to involuntary detention and treatment. The court may then order respondent to undergo up to fourteen days treatment under a less restrictive alternative or, if it finds that such alternatives are not in the best interests of the respondent or others, it shall order the respondent

detained for up to fourteen days for involuntary treatment in a treatment facility.

The court shall specifically state to the respondent, and give him written notice, that if involuntary treatment beyond the fourteen-day period is to be sought, the respondent will have the right to a full treatment hearing as required by this chapter.

SECTION 14. AMENDMENT. Section 25-03.1-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-18. Involuntary treatment - Release. The superintendent or the director may release a patient subject to a fourteen-day evaluation and treatment order or a seventy two hour seven-day emergency order if, in his the superintendent's or director's opinion, the respondent does not meet the criteria of a person requiring treatment or, prior to before the expiration of the fourteen-day order, the respondent no longer requires inpatient treatment. The court shall must be notified of the release and the reasons therefor. If the respondent is released because he the respondent does not meet the criteria of a person requiring treatment, the court shall dismiss the petition.

SECTION 15. AMENDMENT. Section 25-03.1-19 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-19. Involuntary treatment hearing. The involuntary treatment hearing, unless waived by the respondent or the respondent has been released as a person not requiring treatment, shall must be held within fourteen days of the preliminary hearing. If the preliminary hearing is not required, the involuntary treatment hearing shall must be held within seventy two hours seven days of the date the court received the expert examiner's report, not to exceed fourteen days, excluding weekends and holidays, from the time the petition was served. The court may extend the time for hearing for good cause. The respondent has the right to an examination by an independent expert examiner if so requested. If the respondent is indigent, the county of residence of the respondent shall pay for the cost of the examination and the respondent may choose an independent expert examiner.

The hearing shall must be held in the county of the respondent's residence or location, or the county wherein where the state hospital or treatment facility treating the respondent is located. At the hearing, evidence in support of the petition shall must be presented by the state's attorney, private counsel, or counsel designated by the court. During the hearing, the petitioner and the respondent shall must be afforded an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any other interested person. All persons not necessary for the conduct of the proceeding shall must be excluded, except that the court may admit persons having a legitimate interest in the proceeding. The hearing shall must be conducted in as informal a manner as practical, but the issue shall must be tried as a civil matter. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure shall be are available to the respondent. The court shall receive all relevant and material evidence which may be offered as governed by the North Dakota Rules of Evidence. There shall be is a presumption in favor of the respondent, and the burden of proof in support of the petition shall be is upon the petitioner.



If, upon completion of the hearing, the court finds that the petition has not been sustained by clear and convincing evidence, it shall deny the petition, terminate the proceeding, and order that the respondent be discharged if he the respondent has been hospitalized prior to before the hearing.

SECTION 16. AMENDMENT. Section 25-03.1-21 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-21. Involuntary treatment order - Alternatives to hospitalization - Noncompliance with alternative treatment order - Emergency detention by certain professionals - Application for continuing treatment order.

1. Before making its decision in an involuntary treatment hearing, the court shall review a report assessing the availability and appropriateness for the respondent of treatment programs other than hospitalization which has been prepared and submitted by the state hospital or treatment facility. If the court finds that a treatment program other than hospitalization is adequate to meet the respondent's treatment needs and is sufficient to prevent harm or injuries which the individual may inflict upon himself or others, the court shall order the respondent to receive whatever treatment other than hospitalization is appropriate for a period of ninety days.
2. ~~If, during this period, the court or the county court of a different county in which the respondent is presently located learns that the respondent is not complying with the alternative treatment order, or that the alternative treatment has not been sufficient to prevent harm or injuries that the individual may be inflicting upon himself or others, the court may without a hearing, or the county court of a different county in which the respondent is presently located may with a hearing, and based the department, a representative of the treatment program involved in the alternative treatment order, the petitioner's retained attorney, or the state's attorney may apply to the court or to the county court of the different county in which the respondent is located to modify the alternative treatment order. The court shall hold a hearing within seven days after the application is filed. Based upon the record evidence presented at hearing and other available information, the court may:~~
  - ~~1-~~ a. Continue the alternative treatment order;
  - b. Consider other alternatives to hospitalization, modify the court's original order, and direct the individual to undergo another program of alternative treatment for the remainder of the ninety-day period; or
  - ~~2-~~ c. Enter a new order directing that the individual be hospitalized until discharged from the hospital pursuant to under section 25-03.1-30. If the individual refuses to comply with this hospitalization order, the court or the county court of a different county in which the respondent is presently located may direct a peace officer to take the individual into

protective custody and transport him the respondent to a treatment facility.

If the respondent does not comply with the individualized treatment plan contained in an order for alternative treatment, the department of human services or the physician who cares for the respondent may petition the court or the county court of a different county in which the respondent is presently located to direct the respondent to comply with the individualized treatment plan. The court that is petitioned shall set a hearing date which must be within one hundred twenty hours, excluding weekends and holidays, of the date the court received the petition. If at the hearing the court determines the respondent is not complying with the order, the court may direct the respondent to comply with the treatment plan or other appropriate treatment, including another program of alternative treatment or hospitalization for the remainder of the ninety day period.

3. If a peace officer, physician, psychiatrist, clinical psychologist, or any mental health professional reasonably believes that the respondent is not complying with the individualized treatment plan contained in an order for alternative treatment or that the alternative treatment is not sufficient to prevent harm or injuries to the respondent or others, and that ~~consideration~~ considerations of time and safety do not allow intervention by a court, the designated ~~mental health~~ professional may cause the respondent to be taken into custody and detained at a treatment facility as provided in subsection 3 of section 25-03.1-25 and, within twenty-four hours, shall file a notice with the court stating the circumstances and factors of the case. The state hospital or public treatment facility must immediately accept, and a private treatment facility may accept, the respondent on a provisional basis. The superintendent or director shall require an immediate examination of the respondent and, within twenty-four hours after admission, shall either release the respondent subject to the conditions of the original order or file a notice with the court stating in detail the circumstances and factors of the case. The court shall, within forty-eight hours of receipt of the notice of the superintendent or director, after a hearing and based on the record evidence presented and other available information:
  - ~~1-~~ a. Release the individual from hospitalization and continue the alternative treatment order;
  - b. Consider other alternatives to hospitalization, modify its original order, and direct the individual to undergo another program of alternative treatment for the remainder of the commitment period; or
  - ~~2-~~ c. Enter a new order directing that the respondent remain hospitalized until discharged from the hospital pursuant to under section 25-03.1-30.
4. If, at the date of expiration of an order of alternative treatment, it is believed that an individual continues to require treatment, a petition for a determination that the individual continues to be a person requiring treatment may be filed with the court where the individual is located.

SECTION 17. AMENDMENT. Section 25-03.1-22 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-22. Involuntary treatment orders.

1. An initial order for involuntary treatment ~~shall~~ must be for a period not to exceed ninety days.
2. If, prior to before the expiration of the ninety-day order, the director or superintendent believes that a patient's condition is such that ~~he the patient~~ continues to require treatment, the director or superintendent shall, not less than fourteen days ~~prior to before~~ the expiration of the order, petition the court where the facility is located for a determination that the patient continues to be a person requiring treatment and for an order of continuing treatment, which order may be for an unspecified period of time. ~~if the patient has been hospitalized for the treatment of alcoholism, the continuing treatment order may be only for thirty days after which time the patient must be released.~~

SECTION 18. AMENDMENT. Section 25-03.1-25 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-25. Detention or hospitalization - Emergency procedure.

1. When a peace officer, physician, psychiatrist, clinical psychologist, or ~~any~~ mental health professional has reasonable cause to believe that ~~a person is suffering from mental illness, alcoholism, or drug addiction~~ an individual is a person requiring treatment and there exists a serious risk of harm to that person, other persons, or property of such an immediate nature that considerations of safety do not allow preliminary intervention by a magistrate, the peace officer, physician, psychiatrist, clinical psychologist, or mental health professional may cause the person to be taken into custody and detained at a treatment facility as provided in subsection 3, and subject to section 25-03.1-26.
2. If a petitioner seeking the involuntary treatment of a respondent requests that the respondent be taken into immediate custody and the ~~judge~~ magistrate, upon reviewing the petition and accompanying documentation, finds probable cause to believe that the respondent is ~~seriously mentally impaired, an alcoholic, or a drug addict~~ a person requiring treatment and there exists a serious risk of harm to the respondent, other persons, or property if allowed to remain at liberty, the ~~judge~~ magistrate may enter a written order directing that the respondent be taken into immediate custody and be detained as provided in subsection 3 until the preliminary hearing, which ~~shall~~ must be held no more than ~~seventy-two hours, exclusive of weekends and holidays,~~ seven days after the date of the order.
3. Detention under this section may be:
  - a. In a treatment facility where the director or superintendent shall be informed of the reasons why immediate custody has been

- ordered. The facility may provide treatment ~~which~~ that is necessary to preserve the respondent's life, or to appropriately control behavior by the respondent which is likely to result in physical injury to himself or to others if allowed to continue, but may not otherwise provide treatment to the respondent without the respondent's consent; or
- b. In a public or private facility in the community which is suitably equipped and staffed for the purpose. Detention in a jail or other correctional facility may not be ordered except in cases of actual emergency when no other secure facility is accessible, and then only for a period of not more than twenty-four hours and under close supervision.
  4. Immediately upon being taken into custody, the person ~~shall~~ must be advised of the purpose of custody, of the intended uses and possible effects of any evaluation that the person undergoes, and of the person's right to counsel and to a preliminary hearing.
  5. Upon arrival at a facility the peace officer, physician, psychiatrist, clinical psychologist, or ~~the~~ mental health professional who conveyed the person, or who caused the person to be conveyed, shall complete an application for evaluation and shall deliver a detailed written report from the peace officer, physician, psychiatrist, clinical psychologist, or the mental health professional who caused the person to be conveyed. The written report ~~shall~~ must state the circumstances under which the person was taken into custody. The report must allege in detail the overt act which that constituted the basis for the belief that the person is mentally ill, an alcoholic, or drug addict individual is a person requiring treatment and that, because of such condition, there exists a serious risk of harm to that person, another person, or property if the person is not immediately detained.

\* SECTION 19. AMENDMENT. Section 25-03.1-26 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-26. Emergency procedure - Acceptance of petition and individual - Notice - Court hearing set.

1. The state hospital or public treatment facility must immediately accept and a private treatment facility may accept on a provisional basis the application and the person admitted under section 25-03.1-25. The superintendent or director shall require an immediate examination of the subject and, within twenty-four hours after admission, shall either release the person if ~~he~~ the superintendent or director finds that the subject does not meet the emergency commitment standards, or file a petition if one has not been filed with the magistrate of the county court of the person's residence, or to the county of the court which directed immediate custody under subsection 2 of section 25-03.1-25, giving notice to the court and stating in detail the circumstances and facts of the case.

\* NOTE: Section 25-03.1-26 was also amended by section 19 of Senate Bill No. 2056, chapter 69.

2. Upon receipt of the petition and notice of the emergency detention, the magistrate shall set a date for a preliminary hearing to be held no later than ~~seventy-two hours, exclusive of weekends or holidays, seven days~~ after detention unless the person has been released as a person not requiring treatment, has voluntarily admitted himself for treatment, has requested or agreed to a continuance, or unless extended by the magistrate for good cause shown. The magistrate shall appoint counsel if one has not been retained by the respondent.

SECTION 20. AMENDMENT. Section 25-03.1-27 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-27. Notice and statement of rights.

1. Whenever any person is detained for emergency evaluation and treatment ~~pursuant to~~ under this chapter, the superintendent or director shall cause both the patient and, if possible, a responsible member of ~~his~~ the patient's immediate family, a guardian, or a friend, if any, to receive:
  - a. A copy of the petition which asserted that the individual is a person requiring treatment.
  - b. A written statement explaining that the individual will be examined by an expert examiner within twenty-four hours of ~~his~~ hospitalization, excluding ~~Sundays and~~ holidays.
  - c. A written statement in simple terms explaining the rights of the individual to a preliminary hearing, to be present at the hearing, and to be represented by legal counsel, if ~~he~~ the individual is certified by an expert examiner or examiners as a person requiring treatment.
  - d. A written statement in simple terms explaining the rights of the individual to a full court treatment hearing, to be present at the hearing, to be represented by legal counsel, and the right to an independent medical evaluation.
2. If the individual is unable to read or understand the written materials, every reasonable effort shall be made to explain them to ~~him~~ in a language he the individual understands, and a note of the explanation and by whom made ~~shall~~ must be entered into ~~his~~ the patient record.

SECTION 21. AMENDMENT. Subsection 5 of section 25-03.1-30 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. If, upon the discharge of a hospitalized patient, or the termination of alternative treatment of an individual ~~pursuant to~~ under this chapter, it is determined that the individual would benefit from the receipt of further treatment, the hospital or provider of alternative treatment shall offer ~~him~~ him appropriate treatment on a voluntary basis, or shall aid ~~him~~ the individual to obtain treatment from another source on a voluntary basis. With

the individual's consent, the superintendent or director shall notify the appropriate community agencies or persons, or both, of ~~his~~ the release and of the suggested release plan. Community agencies include regional mental health centers, state and local counseling services, public and private associations whose function is to assist ~~the~~ the mentally ill, ~~alcoholic,~~ or ~~drug addict~~ chemically dependent persons, and the individual's physician. The agencies and persons notified of the individual's release shall report to the state hospital that initial contact with the individual has been accomplished.

SECTION 22. AMENDMENT. Section 25-03.1-34 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-34. Transfer of patients.

1. The superintendent or director of a treatment facility may transfer, or authorize the transfer of, an involuntary patient from one hospital to another hospital or facility if the superintendent or director determines that it would be consistent with the medical needs of the patient to do so. In all such transfers, due consideration shall be given to the relationship of the patient to ~~his~~ family, legal guardian, or friends, so as to maintain relationships and encourage visits beneficial to the patient. Whenever any public or private institution licensed by any state for the care and treatment of ~~the~~ the mentally ill or chemically dependent persons shall by agreement with a parent, a brother, a sister, a child of legal age, or guardian of any patient accept ~~such~~ the patient for treatment, the superintendent or director of the treatment facility shall release the patient to ~~said~~ the institution.
2. Upon receipt of notice from an agency of the United States that facilities are available for the care or treatment of any individual ~~heretofore~~ ordered hospitalized pursuant to law in any hospital for care or treatment of ~~the~~ the mentally ill or chemically dependent persons and ~~such~~ the individual is eligible for care or treatment in a hospital or institution of such agency, the superintendent or director of the treatment facility may cause ~~his~~ the individual's transfer to such agency of the United States for hospitalization. No person ~~shall~~ may be transferred to any agency of the United States if ~~he~~ he ~~be~~ the person is confined pursuant to conviction of any felony or misdemeanor or ~~if~~ he ~~he~~ the person has been acquitted of the charge solely on the ground of mental illness unless ~~prior to transfer~~ the court originally ordering confinement of ~~such~~ the person enters an order for such transfer after appropriate motion and hearing. Any person transferred as provided ~~in~~ under this section to an agency of the United States ~~shall~~ be ~~is~~ deemed to be hospitalized by such agency pursuant to the original order of hospitalization.
3. No patient ~~shall~~ may be transferred to another hospital or agency without first notifying the patient and the patient's legal guardian, spouse, or next of kin, if known, or a chosen friend of the patient and the court ordering hospitalization. The patient ~~shall~~ must be given an opportunity to protest the transfer and to

receive a hearing on the ~~merits of his~~ protest. The patient's objection to the transfer must be presented to the court where the facility is located or to a representative of the hospital or facility within ~~five seven days, excluding weekends and holidays,~~ after the notice of transfer was received. If the objection is presented to a representative of the hospital or facility, ~~he the~~ representative shall transmit it to the court forthwith. The court shall set a hearing date which shall be within fourteen days of the date of receipt of the objection. If an objection has not been filed or the patient consents to a transfer, the court may enter an ex parte order authorizing transfer.

SECTION 23. AMENDMENT. Section 25-03.1-42 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-42. Limitation of liability - Penalty for false petition.

1. A person acting in good faith upon either actual knowledge or reliable information who makes the petition for hospitalization of another person under this chapter is not subject to civil or criminal liability.
2. A physician, psychiatrist, clinical psychologist, mental health professional, employee of a treatment facility, state's attorney, or peace officer who in good faith exercises ~~his~~ professional judgment in fulfilling an obligation or discretionary responsibility under this chapter is not subject to civil or criminal liability for ~~his act acting~~ unless it can be shown that it was done in a negligent manner.
3. A person who makes a petition for hospitalization of another person without having good cause to believe that the other person is suffering from ~~a~~ mental illness, ~~alcoholism,~~ or ~~drug addiction~~ chemical dependency and as a result is likely to cause serious harm to himself or others, is guilty of a class A misdemeanor.

SECTION 24. AMENDMENT. Section 25-03.1-43 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-43. Confidential records. All information and records obtained in the course of an investigation, evaluation, examination, or treatment under this chapter and the presence or past presence of a patient in a treatment facility shall be kept confidential and not as public records, except as the requirements of a hearing under this chapter may necessitate a different procedure. All information and records ~~shall be~~ are available to the court and ~~shall be disclosed,~~ under regulations established by the ~~state~~ department ~~of health,~~ may be disclosed only to:

1. Physicians and providers of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient to whom the patient has given written consent to have information disclosed.
2. Individuals to whom the patient has given written consent to have information disclosed.

3. Persons legally representing the patient, upon proper proof of representation and unless the patient specifically withholds consent.
4. Persons authorized by a court order.
5. Persons doing research or maintaining health statistics, if the anonymity of the patient is assured, ~~his~~ the patient's consent is given, and the facility recognizes the project as a bona fide research or statistical undertaking.
6. The director of institutions in cases in which prisoners sentenced to the state prison are patients in the state hospital on authorized transfers either by voluntary admissions or by court order.
7. Governmental or law enforcement agencies when necessary to secure the return of a patient who is absent without authorization from the facility where the patient was undergoing evaluation or treatment.

SECTION 25. AMENDMENT. Section 25-03.1-46 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-46. Rules and regulations - Preparation of forms. The department shall, in accordance with under chapter 28-32, ~~make, promulgate, adopt and enforce such rules and regulations~~ as may be necessary for the implementation of this chapter. The department shall be supreme court, in consultation with the department, the associations of county judges and state's attorneys, and other affected organizations, is responsible for the preparation and the department is responsible for distribution of the necessary and appropriate forms to enable compliance with this chapter.

Approved April 19, 1989  
Filed April 19, 1989



## CHAPTER 150

SENATE BILL NO. 2382  
(J. Meyer)

### INDIGENT CIVIL LEGAL SERVICES FUND

AN ACT to provide for an indigent civil legal services fund; to amend and reenact section 11-17-04 of the North Dakota Century Code, relating to court filing fees and fees to fund civil legal services for indigent persons; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-17-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-17-04. Fees to be charged by the clerk of the district court and county court. The clerk of the district court and county court shall charge and collect the following fees in civil cases:

1. For filing a case for decision in district court or county court which is not a small claims action, twenty dollars.
2. For filing a small claims action in county court, ten dollars.
3. For filing any matter authorized to be filed in the office of the clerk of court other than a case for decision in subsections 1 and 2, five dollars.
4. For preparing, certifying, issuing, or transmitting any document, five dollars; or such lesser fee as may be set by a schedule to be promulgated by the state court administrator.

In addition to the fee required under subsection 1, the clerk of court shall charge and collect a fee of ten dollars. This fee must be deposited with the county treasurer as provided under sections 11-17-05 and 27-07.1-12 and thereafter must be deposited with the state treasurer and credited to an indigent civil legal services fund in the state treasury. Section 27-01-07 applies to fees charged under this section. The clerk of court may not charge or collect any fee, prescribed by this or any other section, from the county, or agencies thereof, in which the office of the clerk of court is located nor may the clerk of court charge or collect the additional ten dollar fee prescribed by this section from the state or an agency thereof or from a political subdivision or agency thereof.

SECTION 2. Indigent civil legal services fund - Distribution. An advisory committee consisting of the lieutenant governor, the attorney general or the attorney general's designee, and the state court administrator shall distribute moneys deposited in the indigent civil legal services fund. Qualified legal service programs may apply for moneys in the fund. The moneys in the fund must be distributed to legal service programs operating in

the state which provide, with funds appropriated by the federal legal services corporation, legal services to persons unable to afford private counsel. Allocation of funds among the programs must be based on the population served by each program, the range of legal services offered, alternative sources of funding, and other factors deemed relevant by the advisory committee.

SECTION 3. Advisory committee and recipients of funds to maintain books and records. The advisory committee and each recipient of funds from the indigent civil legal services fund shall maintain records in accord with the generally accepted accounting principles. The records must account for the receipt and expenditure of all funds distributed and received and must be maintained for a period of five years from the close of the fiscal year in which the funds are distributed or received or until audited, whichever is sooner.

SECTION 4. CONTINUING APPROPRIATION. The moneys deposited in the indigent civil legal services fund in the state treasury are hereby appropriated to the advisory committee on a continuing basis for the purpose of implementing and administering a program to provide civil legal assistance to indigent individuals.

Approved April 28, 1989  
Filed April 28, 1989

## CHAPTER 151

SENATE BILL NO. 2079  
(Senator Yockim)  
(Representatives Gerhardt, Nelson)

**OIL AND GAS INSTRUMENT RECORDING FEES**

AN ACT to amend and reenact subsection 1 of section 11-18-05 of the North Dakota Century Code, relating to fees for recording instruments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 11-18-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. For recording an instrument affecting title to real estate:
  - a. Deeds, mortgages, and all other instruments not specifically provided for in this subsection, five dollars for the first page and two dollars for each additional page.
    - (1) "Page" means one side of a single legal size sheet of paper not exceeding eight and one-half inches [21.59 centimeters] in width and fourteen inches [35.56 centimeters] in length.
    - (2) The printed, written, or typed words must be considered legible by the register of deeds before the page will be accepted for recording.
    - (3) Each real estate instrument must have a legal description considered to be adequate by the register of deeds before such instrument will be accepted for recording.
    - (4) A space of at least four inches by three and one-half inches [10.16 by 8.89 centimeters] square must be provided on the front side of each instrument for register of deeds' recording information. If recording information can only be placed on the reverse side of an instrument, an additional page charge must be levied.
  - b. Instruments satisfying, releasing, assigning, subordinating, continuing, amending, or extending more than one instrument previously recorded in the county in which recording is requested, five dollars for the first page and two dollars for each additional page plus three dollars for each such additional instrument containing a different legal description.
  - c. Plats, irregular tracts, or annexations, five dollars for one lot plus ten cents for each additional lot.
  - d. ~~Oil, gas, and mineral leases, six dollars per page.~~

Approved April 6, 1989  
Filed April 7, 1989

## CHAPTER 152

HOUSE BILL NO. 1272  
(Ulmer)

### **PUBLIC ADMINISTRATORS**

AN ACT to amend and reenact section 11-21-01 of the North Dakota Century Code, relating to the office of public administrators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-21-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-21-01. Public administrator - Appointment - Term of office. ~~The county judge may appoint a public administrator for the county. The county court of each county may appoint a public administrator. A public administrator may be a corporation.~~ The initial appointments under this section may be made upon completion of the terms of public administrators elected in 1984. The public administrator shall hold office for four years and until a successor is appointed and qualified. ~~Two or more county courts may appoint a single public administrator to serve their respective counties.~~

Approved March 29, 1989  
Filed March 30, 1989

## CHAPTER 153

SENATE BILL NO. 2136  
(Committee on Political Subdivisions)  
(At the request of the State Auditor)

### COUNTY BUDGETS AND APPROPRIATIONS

AN ACT to amend and reenact sections 11-23-01 and 11-23-06 of the North Dakota Century Code, relating to county budgets and appropriations; and to repeal section 11-23-08 of the North Dakota Century Code, relating to county expenditures made before the appropriation is approved.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 11-23-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-23-01. Officers required to furnish commissioners with departmental budget. Every officer in charge of any institution, office, or undertaking supported wholly or in part by the county shall file with the board of county commissioners on or before July sixth of each year, on suitable blanks a departmental budget that is prescribed by the state tax commissioner and furnished by the board, auditor. The departmental budget must include an itemized statement of the amounts of moneys which, in the opinion of such officer, estimated amount of money that will be required for the proper maintenance, extension operation, or improvement of such the institution, office, or undertaking for the fiscal ensuing year next ensuing. The statement shall explain any difference between the amount of an estimate and the latest appropriation for the same purpose and it shall cite the laws relating thereto. The board or officer having charge of any poor relief which is supported wholly or in part by the county in like manner shall furnish the board of county commissioners with statements of the estimated amounts required from the county for poor relief during the ensuing fiscal year. The board of county commissioners, on or before June first of each year, shall furnish suitable blanks to each officer or person required to make such statement. The board of county commissioners may require additional information to clarify the departmental budget.

SECTION 2. AMENDMENT. Section 11-23-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-23-06. Expenditure cannot be made in excess of appropriation. No county expenditure shall be made or liability incurred, nor shall a bill be paid for any purpose, in excess of the appropriation ~~therefor~~, except as provided in sections section 11-23-07 and 11-23-08.

SECTION 3. REPEAL. Section 11-23-08 of the North Dakota Century Code is hereby repealed.

Approved March 22, 1989  
Filed March 23, 1989

\* NOTE: Section 11-23-01 was also amended by section 7 of Senate Bill No. 2229, chapter 142.

# CHAPTER 154

HOUSE BILL NO. 1651  
(Representatives Laughlin, Flaagan, Shide)  
(Senators Vosper, Wogsland)

## AMBULANCE SERVICE LEVIES

AN ACT to amend and reenact sections 11-28.3-04, 11-28.3-13, and 57-15-50 of the North Dakota Century Code, relating to the vote requirements for establishment or dissolution of a rural ambulance service district and the levy for county ambulance service within districts which otherwise levy for ambulance service; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-28.3-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-28.3-04. Form of ballot - Vote required to approve. The ballot on the question of forming a rural ambulance service district shall be in substantially the following form:

Shall (name of taxing district or districts) levy a tax of not to exceed ----- mills for the purpose of forming a rural ambulance district?

Yes

No

If ~~sixty percent~~ a majority of all the votes cast on the question of levying a tax and forming a rural ambulance service district are in favor of such a tax levy, then the formation of the district shall be approved.

SECTION 2. AMENDMENT. Section 11-28.3-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-28.3-13. Boundaries of rural ambulance service district - Dissolution of the district. The boundaries of any rural ambulance service district organized under the provisions of this chapter may be changed in the manner prescribed by sections 11-28.3-01 through 11-28.3-06, but a change in the boundary of a district shall not impair or affect its organization or its right in or to property; nor shall it impair, affect, or discharge any contract, obligation, lien, or charge for or upon which it might be liable had such change of boundaries not been made. When a boundary change is requested, the petition, notice of election, and ballot shall all indicate that the purpose of the election is to alter the boundaries of an existing rural ambulance service district. The petition and notice of election shall

describe with particularity both the present and the proposed boundaries of the district.

Dissolution of a rural ambulance service district may be accomplished in the manner prescribed by sections 11-28.3-01 through 11-28.3-04. The petition and notice of election shall state that the purpose of the election is to dissolve the rural ambulance service district and shall describe its boundaries. The ballot to dissolve a rural ambulance service district shall be in substantially the following form:

Shall (name of taxing district or districts) cease to levy a tax for the purpose of maintaining a rural ambulance service district, and shall such district be dissolved?

Yes

No

If ~~sixty percent~~ a majority of all votes cast on the question are in favor of dissolution, then the district shall be dissolved thirty days after the canvass of the votes. After all debts and obligations of the district are paid, any remaining funds shall be deposited in the general fund of the county in which the district was contained. If the dissolved district was located in more than one county, then any funds remaining after all debts and obligations are paid shall be divided among those counties in the same proportion as the geographical area of the district in each county bears to the total geographical area of the dissolved district.

SECTION 3. AMENDMENT. Section 57-15-50 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-50. Levy authorized for county ambulance service. Upon petition of ten percent of the number of qualified electors of the county voting in the last election for governor or upon its own motion, the board of county commissioners of each county shall levy annually a tax not exceeding the limitation in subsection 23 of section 57-15-06.7, for the purpose of subsidizing county ambulance services; provided, that this tax shall be approved by a majority of the qualified electors of the county voting at a regular or special countywide election. The county may budget, in addition to its annual operating budget for subsidizing ambulance service, no more than ten percent of its annual operating budget as a depreciation expense to be set aside in a dedicated ambulance sinking fund deposited with the treasurer for the replacement of equipment and ambulances. The ten percent ambulance sinking fund shall be in addition to the annual operating budget for subsidization, but the total of the annual operating budget and the annual ten percent ambulance sinking fund shall not exceed the approved mill levy. If the county contains a rural ambulance service district or rural fire protection district that levies for and provides ambulance service, the property within that district is exempt from the county tax levy under this section upon notice from the governing body of the district to the board of county commissioners of the existence of the district.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved March 29, 1989  
Filed March 30, 1989