

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 316

SENATE BILL NO. 2120
(Judiciary Committee)
(At the request of the Supreme Court)

MISDEMEANOR PROSECUTION

AN ACT to amend and reenact section 29-01-01 of the North Dakota Century Code, relating to prosecution of crimes; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-01-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

29-01-01. How crimes prosecuted - Exceptions. Every public offense must be prosecuted by information or indictment unless it is one in which:

1. A proceeding is had for the removal of a civil officer of the state or an officer of some political subdivision thereof;
2. There is a breach of military discipline arising in the militia, when in actual service, and in the land and naval forces in time of war or public danger, or which this state may keep, with the consent of Congress, in time of peace; or
3. The offense is a misdemeanor or an infraction; or
4. Trial may be had in municipal court.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 2, 1995
Filed March 3, 1995

CHAPTER 317**SENATE BILL NO. 2369**

(Senators Nalewaja, C. Nelson)
(Representatives Koppelman, Mahoney)

CRIMINAL CASE RECIPROCAL DISCOVERY

AN ACT to create and enact a new section to chapter 29-01 of the North Dakota Century Code, relating to reciprocal discovery in criminal cases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 29-01 of the North Dakota Century Code is created and enacted as follows:

Defendant required to disclose information to prosecuting attorney.

1. Upon the prosecuting attorney's compliance with a written request of the defendant for disclosure under subparagraph C or D of paragraph 1 of subdivision a of rule 16 or subdivision f of rule 16 of the North Dakota Rules of Criminal Procedure, the defendant, upon written request by the prosecuting attorney, shall reciprocate in kind and disclose to the prosecuting attorney:
 - a. The names and addresses of persons, other than the defendant, the defendant's attorney intends to call as witnesses at trial, together with any relevant written or recorded statements of those persons or reports of the statements of those persons, including any reports or statements of experts made in connection with the case, and including the results of physical or mental examinations, scientific tests, experiments, or comparisons that the defendant intends to offer in evidence at the trial.
 - b. Any real evidence that the defendant intends to offer in evidence at the trial.
2. Upon a showing that the prosecution has complied with the discovery procedure provided in rule 16 of the North Dakota Rules of Criminal Procedure, a court may make any order necessary to enforce the provisions of this section, including immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of a witness or the presentation of real evidence, continuance of the matter, or any other lawful order. Further, the court may advise the jury of any failure or refusal to disclose and of any untimely disclosure.
3. The court may prohibit the testimony of a witness pursuant to subsection 2 only if all other sanctions have been exhausted.

Approved March 28, 1995

Filed March 28, 1995

CHAPTER 318

SENATE BILL NO. 2116

(Judiciary Committee)

(At the request of the Supreme Court)

TRAFFIC VIOLATIONS, CITATIONS, AND BOND FORFEITURES

AN ACT to amend and reenact sections 29-05-31, 39-06.1-02, subsection 1 of section 39-06.1-03, sections 39-07-07, and 39-07-08 of the North Dakota Century Code, relating to uniform traffic citations, bond forfeitures, and procedures for disposition of noncriminal traffic violations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-05-31 of the North Dakota Century Code is amended and reenacted as follows:

29-05-31. Uniform traffic complaint and summons. There is hereby established a uniform complaint and summons which that may be used in cases involving violations of statutes or ordinances relating to the operation or use of motor vehicles. Whenever the complaint and summons established by this section is used, the provisions of rule 5 of the North Dakota Rules of Criminal Procedure relating to arrests without warrants do not apply, and the magistrates or state's attorneys are not required to make another complaint of the offense charged in the uniform complaint and summons. The uniform complaint and summons established herein must be in substantially the following form:

State of North Dakota) In _____ Court,
)ss
County of _____) Before Hon. _____;
The undersigned, being duly sworn, upon his oath deposes and says that, on the _____ day of _____ 19_____

First Name Middle Name Last Name Street City State
did unlawfully operate a motor vehicle upon a public highway,
namely _____, _____ N E S W of _____ and did then
Location City
and there commit the following offense: _____
MPH in _____
MPH Zone _____

All in violation of the Sec. _____ of the N.D. Century Code as amended and against the peace and dignity of the state of N.D.

Officer _____ LET A WARRANT ISSUE HEREIN Sworn to and subscribed before me this _____ day of _____ 19_____.

Judge

State's Attorney

DESCRIPTION OF DEFENDANT AND VEHICLE

Mo. ____ Day ____ Yr. ____ Race ____ Sex ____ Wt. ____ Ht. ____
 Birth date
 Hair ____ Dr. Lic: State ____ No. ____ Motor Vehicle:
 PSC
 Make ____ Reg. No. ____ State ____ Year ____ ICC No. ____

CLAIMED CONDITIONS OF THE VIOLATION

SLIPPERY SURFACE

____ Rain ____ Snow ____ Ice

DARKNESS

____ Night ____ Fog ____ Snow

OTHER TRAFFIC PRESENT

____ Cross ____ Oncoming ____ Pedestrian
 ____ Same direction

IN ACCIDENT

____ Ped. ____ Vehicle ____ Intersection
 ____ Right angle ____ Head on ____ Rear end
 ____ Ran off road ____ Other

Area: ____ School ____ Rural ____ Business
 ____ Industrial ____ Residential
 Highway: ____ 2 Lane ____ 4 Lane ____ 4 Lane Divided
 Type
 ____ Gravel ____ Dirt

OFFENSE CONTRIBUTED MATERIALLY TO ACCIDENT

____ Yes ____ No

THE STATE OF NORTH DAKOTA TO THE ABOVE-NAMED DEFENDANT

(CITY ORDINANCE OR STATE CRIMINAL TRAFFIC VIOLATION)

You are hereby summoned to appear at the time and place designated below to answer to the charge above indicated to be made against you

 Appearance

Before: Municipal Judge-County District Ct. _____
 _____ A.M./P.M.

Location Month Day Year Time
 Dated this ____ day of ____ 19 ____
 Officer _____

PROMISE TO APPEAR

I hereby consent and promise to appear at the time and place specified in the above summons, the receipt of a copy of which is hereby acknowledged, and I expressly waive earlier hearing.

Dated this ____ day of ____ 19 ____
 Defendant _____

(STATE NONCRIMINAL TRAFFIC VIOLATION)

You are hereby notified of your right to request, within fourteen days of the date of this citation, a hearing concerning the alleged traffic violation. If you do not request a hearing, the bond is deemed forfeited and the violation admitted. If you are requesting a hearing, date and sign the following portion of this citation AND INCLUDE THE BOND NOTED ON THIS CITATION for the alleged violation. Failure to do so may result in the suspension of your operator's license. You will be notified of the hearing date by the court for the county in which this citation was issued.

REQUEST FOR HEARING

I hereby submit the designated bond and request a hearing on the alleged traffic violation and promise to appear at the time and date specified in the summons issued by the court for the county in which the citation was issued.

Dated this _____ day of _____ 19____
 Defendant _____

SECTION 2. AMENDMENT. Section 39-06.1-02 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-02. Traffic violations noncriminal - Exceptions - Procedures. Any person cited, in accordance with ~~the provisions~~ of sections 39-07-07 and 39-07-08, for a traffic violation under state law or municipal ordinance, other than an offense listed in section 39-06.1-05, ~~shall be is~~ deemed to be charged with a noncriminal offense ~~and~~. The person may appear before the designated official and pay the statutory fee for the violation charged at or prior to before the time scheduled for a hearing; or, if he. If the person has posted bond in person; as provided by section 39-07-07; or by mail, he the person may forfeit bond by not appearing at the designated time. If the person appears is cited for a traffic violation under state law and posts bond by mail, the bond must be submitted within fourteen days of the date of the citation. When posting bond by mail, the person cited shall indicate on the envelope or citation whether a hearing is requested. If the person does not request a hearing within fourteen days of the date of the citation, the bond is deemed forfeited and the violation admitted. If the person requests a hearing, the court for the county in which the citation is issued shall issue a summons to the person requesting the hearing notifying the person of the date of the hearing before the designated official in accordance with section 39-06.1-03. Upon appearing at the time hearing scheduled in the citation or otherwise scheduled at the person's request, he the person may make a statement in explanation of his the person's action; and the. The official may at that time; in his discretion; waive, reduce, or suspend the statutory fee or bond, or both. If the person cited follows the foregoing procedures, he shall be the person is deemed to have admitted the violation and to have waived his the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the official designated in the citation must be identical to the statutory fee established by section 39-06.1-06. Within ten days after forfeiture of bond or payment of the statutory fee, the official having jurisdiction over the violation shall certify to the licensing authority:

1. Admission of the violation; and
2. In speeding violations, whether the speed charged was in excess of the lawful speed limit by more than nine miles [14.48 kilometers] per hour and the miles [kilometers] per hour by which the speed limit was exceeded.

This section ~~may not be construed as allowing~~ does not allow a halting officer to receive the statutory fee or bond, unless ~~he~~ the officer is otherwise authorized by law to do so.

¹⁷⁴ SECTION 3. AMENDMENT. Subsection 1 of section 39-06.1-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. ~~If a~~ A person cited for a traffic violation, other than an offense listed in section 39-06.1-05, who ~~does not choose to~~ follow one of the procedures set forth in section 39-06.1-02, he may request a hearing on the issue of ~~his~~ commission of the violation charged; ~~the~~. The hearing to must be held at the time scheduled in the citation, at the time scheduled in response to the person's request, or at some future time, not to exceed ninety days later, set at that first appearance.

SECTION 4. AMENDMENT. Section 39-07-07 of the North Dakota Century Code is amended and reenacted as follows:

39-07-07. Halting person for violating traffic regulations - Duty of officer halting. Whenever any person is halted for the violation of any of the provisions of chapters 39-01 through 39-13, 39-18, 39-21, and 39-24, or of equivalent city ordinances, the officer halting that person, except as otherwise provided in section 39-07-09 and section 39-20-03.1 or 39-20-03.2, may:

1. Take the name and address of the person;
2. Take the license number of the person's motor vehicle; and
3. ~~Issue~~ If a city ordinance or state criminal traffic violation, issue a summons or otherwise notify that person in writing to appear at a time and place to be specified in the summons or notice or, if a state noncriminal traffic violation, notify the person of the right to request a hearing when posting bond by mail.

A halting officer employed by any political subdivision of the state may not take a person into custody or require that person to proceed with the officer to any other location for the purpose of posting bond, where the traffic violation was a noncriminal offense under section 39-06.1-02. The officer shall provide the person with an envelope for use in mailing the bond.

SECTION 5. AMENDMENT. Section 39-07-08 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹⁷⁴ Section 39-06.1-03 was also amended by section 1 of Senate Bill No. 2048, chapter 375.

39-07-08. Hearing - Time - Promise of defendant to appear - Failure to appear - Penalty. The time to be specified in the summons or notice provided for in section 39-07-07 must be within thirty-five days after the issuance of the summons or notice or earlier if so ordered by the magistrate of the city or county having jurisdiction over the offense or if the person halted demands an earlier hearing; ~~and, if.~~ If the person halted desires, the person may have the right, at a convenient hour, to an immediate hearing or to a hearing within twenty-four hours. The hearing must be before a magistrate of the city or county in which the offense was committed. If an immediate hearing is demanded, a ~~county~~ district judge serving ~~more than one~~ the county, ~~may,~~ with the consent of the respective prosecuting attorneys, may order the hearing to be held in any of the counties in which the ~~county~~ district judge has jurisdiction, rather than in the county where the offense was allegedly committed. Upon the receipt from the person halted of a written promise to appear at the time and place mentioned in the summons or notice, the officer shall release the person from custody. Any person refusing to give a written promise to appear must be taken immediately by the halting officer before the nearest or most accessible magistrate, or to such other place or before such other person as may be provided by a statute or ordinance authorizing the giving of bail. Any person willfully violating the person's written promise to appear is guilty of a class B misdemeanor, regardless of the disposition of the charge upon which the person originally was halted. The time limitations for a hearing as provided by this section do not preclude a recharging of the alleged violation if the person being charged receives a new summons or notice subject to the provisions of this section.

Approved March 10, 1995
Filed March 10, 1995

CHAPTER 319**HOUSE BILL NO. 1244**

(Representatives Martinson, Bateman, Byerly, Carlisle, DeWitz)

**ARREST AND SEARCH WARRANT INFORMATION
RELEASE**

AN ACT to create and enact a new section to chapter 29-05 and a new section to chapter 29-29 of the North Dakota Century Code, relating to the release of information contained in arrest and search warrants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 29-05 of the North Dakota Century Code is created and enacted as follows:

Release of information contained in complaint or warrant. The magistrate who issues a warrant for arrest shall order the information in the complaint and warrant confidential, if the law enforcement officer articulates a reason for the confidentiality that convinces the issuing magistrate that limited confidentiality is necessary for the safety of the law enforcement officer or to enable the warrant to be properly served. The magistrate shall limit the duration of the order to the time of the arrest of the accused and shall exempt law enforcement officers in the performance of official duties.

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

Release of information contained in complaint or warrant. The magistrate who issues a search warrant shall order the information in the complaint and warrant confidential, if the law enforcement officer articulates a reason for the confidentiality that convinces the issuing magistrate that limited confidentiality is necessary for the safety of the law enforcement officer or to enable the warrant to be properly served. The magistrate shall limit the duration of the order to the time of the arrest of the accused and shall exempt law enforcement officers in the performance of official duties.

Approved March 14, 1995

Filed March 14, 1995

CHAPTER 320

SENATE BILL NO. 2346
(Senators Watne, C. Nelson, Traynor)
(Representative Timm)

ADMISSIBILITY OF CONFESSIONS

AN ACT to repeal section 29-21-12.1 of the North Dakota Century Code, relating to the admissibility of confessions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 29-21-12.1 of the North Dakota Century Code is repealed.

Approved March 1, 1995
Filed March 2, 1995

CHAPTER 321**HOUSE BILL NO. 1131**

(Political Subdivisions Committee)

(At the request of the Office of Management and Budget)

CRIMINAL FINES IMPOSITION AND DISPOSITION

AN ACT to amend and reenact sections 29-26-22, 29-26-22.2, and 29-27-02.1 of the North Dakota Century Code, relating to imposition and disposition of fines and fees for violation of state law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-26-22 of the North Dakota Century Code is amended and reenacted as follows:

29-26-22. Judgment for fines, costs, and court administration fee - Statement to be filed by court - Docketing and enforcement. In all criminal cases of conviction upon a plea or finding of guilt, a court administration fee of up to ~~twenty-five~~ thirty percent of the maximum allowable fine for the offense may be taxed against the defendant in lieu of the assessment of court costs. If the court does assess costs as part of its sentence, the court shall include in the judgment the facts justifying the amount assessed. ~~When a fine is imposed and suspended or the imposition of a sentence is deferred under subsection 4 of section 12-1-32-02, the court administration fee may be taxed against the defendant and twenty-five percent of the fee collected must be added to the fund for the maintenance of common schools pursuant to section 2 of article IX of the Constitution of North Dakota District court costs, administration fees, and forfeitures must be deposited in the state general fund.~~ A judgment that the defendant pay a fine, costs, or court administration fee, or any combination thereof, may be docketed, and thereafter constitutes a lien upon the real estate of the defendant in like manner as a judgment for money rendered in a civil action. The court may allow the defendant to pay any assessed costs or administrative fee in installments. When a defendant is assessed costs or administrative fees, the court may not impose at the same time an alternative sentence to be served if the costs are not paid.

SECTION 2. AMENDMENT. Section 29-26-22.2 of the North Dakota Century Code is amended and reenacted as follows:

29-26-22.2. Authority to compromise judgment by county commissioners. The board of county commissioners has authority to compromise and settle any judgment for fines or costs payable to the county treasury after a lapse of two years from the filing thereof, if in the opinion of said board said judgment cannot be collected in full. Upon receipt of a certified copy of the board's action, the state's attorney of said county shall in accordance therewith make and file a partial or total satisfaction of said judgment as attorney for the county.

SECTION 3. AMENDMENT. Section 29-27-02.1 of the North Dakota Century Code is amended and reenacted as follows:

29-27-02.1. Disposition of statutory fees, fines, forfeitures, pecuniary penalties, and bond forfeitures. ~~At~~ Except as otherwise provided by law, all statutory fees, fines, forfeitures, and pecuniary penalties prescribed for a violation of state laws, when collected, must be paid into the treasury of the proper county to be added to the state school fund. When any bail bond or other property or money deposited as bail is forfeited to the state, the proceeds collected therefrom must be paid over to the ~~treasurer of the county whose officers originally instituted the action and credited to the general fund of the county. In the event that the attorney general of the state of North Dakota originally instituted the action, the bail bond, money, or other property forfeited must be paid over to the proper state official and credited to the state school~~ general fund.

Approved April 11, 1995

Filed April 12, 1995