

**TITLE 29
JUDICIAL PROCEDURE, CRIMINAL**

**CHAPTER 29-01
GENERAL PROVISIONS**

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;
3. The offense is a misdemeanor or an infraction; or
4. Trial may be had in municipal court.

29-01-02. Criminal action medium of trial and punishment.

The proceeding by which a party charged with a public offense is accused and brought to trial and punishment is known as a criminal action.

29-01-03. How prosecution entitled.

A criminal action is prosecuted in the name of the state of North Dakota as a party against the party charged with the offense.

29-01-04. Affidavits need not be entitled.

It is not necessary to entitle an affidavit or deposition in an action whether taken before or after information or indictment or upon an appeal, but if made without a title or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refers to the proceeding, information, indictment, or appeal in which it is made.

29-01-05. Party defendant is party prosecuted.

The party prosecuted in a criminal action is designated in this code as the accused or as the defendant.

29-01-06. Rights of defendant.

In all criminal prosecutions the party accused has the right:

1. To appear and defend in person and with counsel;
2. To demand and be informed of the nature and cause of the accusation;
3. To meet the witnesses against the party face to face;
4. To have the process of the court to compel the attendance of witnesses in the party's behalf; and
5. To a speedy and public trial, and by an impartial jury in the county in which the offense is alleged to have been committed or is triable, but subject to the right of the state to have a change of the place of trial for any of the causes for which the party accused may obtain the same.

29-01-06.1. Rights of defendant - Exception.

When the defendant is charged with a crime under a multiple count indictment or information as allowed by the North Dakota Rules of Criminal Procedure, the defendant may be tried on all counts in any one of the counties in which one of the offenses was committed.

29-01-06.2. Summoned person to report to sheriff.

Whenever a person charged with a felony is not arrested but is summoned to appear in court, that person shall submit to the sheriff for identification procedures at the time of the first court appearance.

29-01-07. Only once prosecuted.

No person can be twice put in jeopardy for the same offense, nor can any person be subjected to a second prosecution for a public offense for which that person has once been prosecuted and convicted, or acquitted, or put in jeopardy, except as is provided by law for new trials.

29-01-08. Extent of restraint permissible.

No person charged with a public offense can be subjected before conviction to any more restraint than is necessary for the person's detention to answer the charge.

29-01-09. How conviction can be had.

No person can be convicted of a crime or public offense except:

1. By the verdict of a jury accepted and recorded by the court;
2. Upon a plea of guilty;
3. Upon a judgment against that person, that person's motion to quash having been denied;
4. Upon a judgment of a municipal court, or such other court as is or may be created by law for cities in a case in which such judgment may be lawfully given without the intervention of a jury; or
5. By the judgment of a court, a jury having been waived.

29-01-10. Where district courts held.

Each district court may be held, for the trial of a criminal action, in an organized county.

29-01-11. District court always open - Exception - Question of fact - Terms.

Superseded by N.D.R.Crim.P., Rule 56.

29-01-12. Decision of district court reviewable.

The final decision of the district court in a criminal action is reviewable and determinable by the supreme court according to law on an appeal bringing up for review the record and proceedings therein.

29-01-13. Definitions.

As used in this title, unless the context or subject matter otherwise clearly requires:

1. Superseded by N.D.R.Crim.P., Rule 3.
2. An "indictment" is an accusation in writing presented by a grand jury to a competent court charging a person with a crime or public offense.
3. A "presentment" is an informal statement in writing by a grand jury representing to the court that a public offense has been committed which is triable in the county or subdivision, and that there is reasonable ground to believe that a particular individual named or described has committed it.
4. An "information" is an accusation in writing, in form and substance like an indictment for the same offense, charging a person with a crime or public offense, signed and verified by some person and presented to the district court and filed in the office of the clerk of said court.
5. A "magistrate" is an officer authorized by law to issue a warrant for the arrest of a person charged with a crime or public offense.
6. The term "writing" includes printing and typewriting.
7. The term "oath" includes an affirmation.

8. The term "signature" includes a mark, when the person cannot write, the person's name being written near it and the mark being witnessed by a person who writes the witness's own name as a witness, except that if the paper is an affidavit or deposition, or a paper issued before a judicial officer, the attestation of the officer is sufficient.
9. The term "county" includes an organized county, or an organized county and such unorganized counties or other territory or parts of this state as may be attached by law to such organized county for judicial purposes.

29-01-14. Who are magistrates.

The following officers are magistrates:

1. The judges of the supreme court, with authority to act as such throughout the state.
2. The judges of the district courts, with authority to act as such throughout the judicial districts for which they respectively are elected.
3. As limited by law directing the place of exercising their jurisdiction and authority, magistrates appointed by the presiding judge of a judicial district, municipal judges, and small claims court referees who are licensed to practice law and authorized by the presiding judge of the judicial district in case of an emergency, each with authority to act as magistrate throughout the county or the city for which the magistrate is elected or appointed.

29-01-15. Jurisdiction of municipal judges and small claims court referees.

Any municipal judge may:

1. Act as committing magistrate; provided, that this subsection does not apply to municipal judges who are not attorneys currently licensed under chapter 27-11.
2. Hear, try, and determine misdemeanors and infractions when jurisdiction has been conferred by the Constitution of North Dakota and this and other laws.
3. Adjudge and impose the punishment prescribed by law, upon conviction, in all cases within the municipal judge's jurisdiction to hear, try, and determine.
4. Grant temporary protection orders under the particular circumstances and for the limited duration set forth in section 14-07.1-08.

A small claims court referee authorized pursuant to subsection 3 of section 29-01-14 may act as a committing magistrate. A magistrate appointed by the presiding judge of the judicial district has the authority to act to the extent allowed by rules promulgated by the supreme court.

29-01-16. When misdemeanor or infraction may be compromised.

When a defendant is held to answer on a charge constituting a misdemeanor or infraction, for which a person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in section 29-01-17, except:

1. If the offense was committed by or upon a judge of any court in this state, or in any city in this state, or a peace officer, while in the execution of the duties of the person's office;
2. If the offense was committed with an intent to commit a felony; or
3. If the offense involves a crime of domestic violence as defined in section 14-07.1-01 or is a violation of section 12.1-20-05, 12.1-20-07, 12.1-20-12.1, or 12.1-20-12.2.

29-01-17. Stay of proceedings upon compromise.

If a party injured appears before the court in which a trial for the commission of a public offense is to be had, at any time before the trial, and acknowledges that the party injured has received satisfaction for the injury, the court, on payment of the costs incurred, may order all proceedings to be stayed upon the prosecution and the defendant to be discharged therefrom, but in such a case the reasons for the order must be set forth therein and entered on the minutes.

29-01-18. Order to stay is a bar.

The order authorized by section 29-01-17 is a bar to another prosecution for the same offense.

29-01-19. Compromise limited.

A public offense may not be compromised, nor may any proceeding for the prosecution or punishment of a public offense, upon a compromise, be stayed except as is provided in sections 29-01-16 and 29-01-17.

29-01-20. Stolen property to be held by peace officer.

1. Except as provided in subsection 2, whenever property alleged to have been stolen or embezzled comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by section 29-01-21 to direct the disposal thereof.
2. Subsection 1 does not apply to:
 - a. Consumer goods, as defined in section 41-09-02; and
 - b. Goods covered by a certificate of title if proof of certificate of title is presented to the peace officer.

29-01-21. Magistrate to give order for delivery.

On satisfactory proof of the title of the owner of the property, the magistrate before whom the complaint is laid, or who examines the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner on the owner's paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

29-01-22. Delivery of stolen property by magistrate.

If property stolen or embezzled comes into the custody of a magistrate, it must be delivered to the owner on satisfactory proof of the owner's title and on the owner's paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

29-01-23. Court may order delivery of stolen property.

If property stolen or embezzled has not been delivered to the owner, the court before which a trial is had for stealing or embezzling it, on proof of the owner's title, may order it to be restored to the owner.

29-01-24. Unclaimed stolen property - Delivery to county treasurer.

If the property stolen or embezzled is not claimed by the owner within six months from the conviction of a person for stealing or embezzling it, the magistrate or officer having it in custody, on the payment of the necessary expenses incurred in its preservation, shall deliver it to the county treasurer by whom, if it is money, it must be paid into the county treasury, or if it is not money, it must be sold and the proceeds paid into such treasury.

29-01-25. Receipt to accused and clerk or magistrate.

When money or other property is taken from a defendant arrested upon a charge of a public offense, the officer taking it at the time shall give duplicate receipts therefor, specifying particularly the amount of the money, or the kind of property taken, one of which receipts the officer shall deliver to the defendant, and the other of which the officer shall file at once with the clerk of the court to which the complaint and other papers in the case by law are required to be sent. When such property is taken by a police officer of any incorporated city, the officer shall deliver one of the receipts to the defendant and one, with the property, at once to the clerk or other person in charge of the police office in such city, or, if there is no such clerk or other person, then to the magistrate before whom such defendant may be taken for examination or trial.

29-01-26. Duty of clerk or magistrate.

The clerk, magistrate, or other person to whom property is delivered, as provided in section 29-01-25, shall record every amount of money and a description of every article of property taken from each person arrested, attach a number to every amount of money and every article of property, and make a corresponding entry thereof. Sufficient compliance with this section is met if the entries are made in the docket of the magistrate after the receipt and property are delivered to a magistrate, as provided in section 29-01-25.

29-01-27. Indigent defendant - Attorney appointed - Compensation - Limitation.

Repealed by S.L. 1967, ch. 259, § 3.

29-01-28. Spectators excluded from trial of minors.

Repealed by S.L. 1995, ch. 124, § 21.

29-01-29. Rule of construction of title.

The rule of the common law that penal statutes are to be strictly construed has no application to this title. This title establishes the law of this state respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed with a view to promoting its objects and in furtherance of justice.

29-01-30. To what this title applies.

Superseded by N.D.R.Crim.P., Rule 1.

29-01-31. Common law prevails when title silent.

Superseded by N.D.R.Crim.P., Rule 1.

29-01-32. Defendant required to disclose information to prosecuting attorney.

Repealed by S.L. 1997, ch. 51, § 40.

29-01-33. Change of place of criminal proceedings - Jury.

Superseded by N.D.R.Crim.P., Rules 18, 21.