

## **CHAPTER 29-06 ARREST**

### **29-06-01. Arrest defined.**

An arrest is the taking of a person into custody in the manner authorized by law to answer for the commission of an offense.

### **29-06-02. Who may make an arrest.**

An arrest may be made:

1. By a peace officer, under a warrant;
2. By a peace officer, without a warrant; or
3. By a private person.

### **29-06-03. Officer may summon aid to make arrest.**

Any officer making an arrest may summon as many persons orally as the officer deems necessary to aid the officer therein.

### **29-06-04. Persons must aid in making arrest.**

Every person, when required, shall aid an officer in the making of an arrest.

### **29-06-05. Foreign peace officer in fresh pursuit may arrest in state.**

Any member of a duly organized state, county, or municipal law enforcement unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit of a person in order to arrest the person on the ground that the person is believed to have committed a felony, misdemeanor, or traffic violation in such other state, shall have the same authority to arrest and hold such person in custody as has any member of any duly organized state, county, or municipal law enforcement unit of this state to arrest and hold in custody a person on the ground that the person is believed to have committed a felony, misdemeanor, or traffic violation in this state.

#### **29-06-05.1. Foreign officer providing transportation for law enforcement purposes.**

Any member of a duly organized state, county, or municipal law enforcement unit of another state of the United States who enters this state to perform an assigned duty of transporting persons in legal custody for law enforcement purposes has the same authority to transport persons in legal custody as any member of any duly organized state, county, or municipal law enforcement unit of this state if a reciprocal right to transport persons in legal custody is extended to North Dakota peace officers in the peace officer's state or local jurisdiction.

#### **29-06-05.2. Federal law enforcement officer - Authority to make arrests.**

1. "Federal agent" means an employee of the federal bureau of investigation; the federal drug enforcement administration; the bureau of alcohol, tobacco, firearms and explosives; the homeland security investigations unit of the department of homeland security; the bureau of Indian affairs police; the United States marshals service; or the United States customs and border protection who is authorized to arrest, with or without a warrant, any individual for a violation of the United States Code and carry a firearm in the performance of the employee's duties as a federal law enforcement officer.
2. A federal agent has the same authority and immunity as a peace officer in this state when making an arrest for a nonfederal crime if any of the following exist:
  - a. The federal agent has reasonable grounds to believe that a felony offense was committed and the individual arrested committed the offense.
  - b. The federal agent is rendering assistance to a peace officer in an emergency or at the request of the peace officer.
  - c. The federal agent is working as a part of a task force composed of North Dakota peace officers and federal law enforcement officers.

3. Any agreement entered under this section relating to reciprocal jurisdiction between a public agency and a tribal government must be made pursuant to chapter 54-40.2.

**29-06-05.3. Peace officers acting outside geographic jurisdiction.**

1. As used in this section, "peace officer" means a salaried public servant employed by a criminal justice agency of the state or a political subdivision to enforce the law or to conduct or engage in investigations or prosecutions for violations of law.
2. If a peace officer is transporting an individual who is under arrest or is being detained under chapter 25-03.1, the peace officer's authority extends throughout the entire state, as follows:
  - a. After arrest, until the individual is delivered into the custody of the nearest jail, regional corrections center, or correctional facility as defined by chapter 12-44.1, including while the individual is being treated for a medical condition or infirmity;
  - b. While an individual is being detained during pretrial, in any jail, regional corrections center, or correctional facility and, is being transported for treatment for a medical condition or other physical or mental infirmity that occurred while the individual was in custody;
  - c. While the peace officer is detaining an individual under chapter 25-03.1 and the individual is being transported to a treatment facility for evaluation or treatment;
  - d. While the peace officer is detaining or transporting an individual pursuant to an order issued by the district court; and
  - e. While the peace officer is transporting an individual convicted under chapter 12.1-32 to a jail, regional corrections center, or correctional facility to serve a term of confinement as ordered by the district court.

**29-06-06. Hearing before local magistrate and order thereon.**

1. If an arrest is made in this state by an officer of another state in accordance with the provisions of section 29-06-05, the officer, without unnecessary delay, shall take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful, the magistrate shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state, or shall admit the person to bail for such purpose. If the magistrate determines that the arrest was unlawful, the magistrate shall discharge the person arrested.
2. Notwithstanding the provisions of chapter 29-30.3 and subsection 1, a person arrested for a misdemeanor or traffic violation pursuant to section 29-06-05 may voluntarily return to the foreign state without a hearing before a magistrate.

**29-06-07. Definition of fresh pursuit.**

As used in section 29-06-05, the term "fresh pursuit" shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed or who is reasonably suspected of having committed a felony, misdemeanor, or traffic violation. It also shall include the pursuit of a person suspected of having committed a supposed felony, misdemeanor, or traffic violation, though no felony, misdemeanor, or traffic violation has been actually committed, if there is reasonable ground for believing that a felony, misdemeanor, or traffic violation has been committed. Fresh pursuit, as the term is used in this chapter, shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

**29-06-08. When arrest made for felony, misdemeanor, or infraction.**

An arrest for a felony, misdemeanor, or infraction may be made on any day and at any time of the day or night.

**29-06-09. How arrest made.**

An arrest is made by an actual restraint of the person of the defendant or by the defendant's submission to the custody of the person making the arrest.

**29-06-10. Restraint in an arrest is limited.**

A person who is arrested may not be subjected to unnecessary or unreasonable force, nor to any greater restraint than is necessary for the person's detention.

**29-06-11. Warrant must be shown.**

If the person making an arrest is acting under the authority of a warrant, the person shall inform the defendant to that effect and shall show the warrant, if required.

**29-06-12. Officer must obey warrant in making arrest.**

An officer making an arrest in obedience to a warrant shall proceed with the person arrested as commanded in the warrant, or as otherwise provided by law.

**29-06-13. When defendant resists, force necessary may be used to make arrest.**

If, after notice of intention to arrest the defendant, the defendant either flees or forcibly resists, the officer may use all necessary means to effect the arrest.

**29-06-13.1. Resisting peace officer.**

Repealed by S.L. 1975, ch. 106, § 673.

**29-06-14. Officer may break door.**

An officer may break open any door or window of a dwelling house to execute a warrant of arrest, or to make such arrest for a felony without a warrant, as is provided in section 29-06-15, if, after notice of the officer's authority and purpose, the officer is refused admittance.

**29-06-15. Arrest without warrant - Peace officer - Federal agent.**

1. A law enforcement officer, without a warrant, may arrest a person:
  - a. For a public offense, committed or attempted in the officer's presence and for the purpose of this subdivision, a crime must be deemed committed or attempted in the officer's presence when what the officer observes through the officer's senses reasonably indicates to the officer that a crime was in fact committed or attempted in the officer's presence by the person arrested.
  - b. When the person arrested has committed a felony, although not in the officer's presence.
  - c. When a felony in fact has been committed, and the officer has reasonable cause to believe the person arrested to have committed it.
  - d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.
  - e. For the public offenses, not classified as felonies and not committed in the officer's presence as provided for under section 29-06-15.1.
  - f. On a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages.
  - g. For the offense of violating a protection order under section 14-07.1-06, an order prohibiting contact under section 12.1-31.2-02, or for an assault involving domestic violence under section 14-07.1-11.
  - h. On a charge, made upon reasonable cause, of being under the influence of volatile chemical vapors in violation of section 19-03.1-22.1.
2. A federal agent, without a warrant, may arrest a person if all of the following circumstances exist:
  - a. The officer is on duty.
  - b. One or more of the following situations exist:

- (1) The person commits an assault or other crime, defined and punishable under chapter 12.1-17, against the officer or against any other person in the presence of the officer.
  - (2) The officer has reasonable cause to believe that a crime, as defined in paragraph 1, has been committed and reasonable cause to believe that the person to be arrested has committed it.
  - (3) The officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person to be arrested has committed it.
  - (4) The officer has received positive information from an authoritative source that a peace officer holds a warrant for the person's arrest.
3. If a law enforcement officer has reasonable cause to believe an individual has violated a lawful order of a court of this state which requires the individual to participate in the twenty-four seven sobriety program authorized in sections 54-12-27 through 54-12-31, the law enforcement officer may immediately take the individual into custody without a warrant. An individual taken into custody under this subsection may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate.

**29-06-15.1. Arrest of nonresident traffic violator.**

A police officer at the scene of a traffic accident may arrest without a warrant any driver of a vehicle who is a nonresident of this state and who is involved in the accident when based upon personal investigation, the officer has reasonable and probable grounds to believe that the person has committed any offense under the provisions of title 39 in connection with the accident, and if the officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in court.

Whenever any person is arrested under the provisions of this section, the person must be taken without unnecessary delay before the proper magistrate.

**29-06-16. Arrest at night - Reasonable cause.**

Repealed by S.L. 1971, ch. 314, § 2.

**29-06-17. Officer shall state authority when arresting without warrant.**

When making an arrest without a warrant, the officer shall inform the person to be arrested of the officer's authority and the cause of the arrest, unless:

1. The person to be arrested then is engaged in the commission of an offense;
2. Such person is pursued immediately after the commission of an offense or after an escape;
3. Such person flees or forcibly resists before the officer has opportunity so to inform the person; or
4. The giving of such information will imperil the arrest.

**29-06-18. Arrest by bystander.**

An officer may take before a magistrate a person who, while engaged in a breach of the peace, is arrested by a bystander and delivered to the officer.

**29-06-19. Offense committed in presence of magistrate.**

When a public offense is committed in the presence of a magistrate, the magistrate, by a verbal or written order, may command any person immediately to arrest the offender, and thereupon may proceed as if the offender had been brought before the magistrate on a warrant of arrest.

**29-06-20. When private person may arrest.**

A private person may arrest another:

1. For a public offense committed or attempted in the arresting person's presence.

2. When the person arrested has committed a felony, although not in the arresting person's presence.
3. When a felony has been in fact committed, and the arresting person has reasonable grounds to believe the person arrested to have committed it.

**29-06-21. Must inform person of cause of arrest.**

A private person making an arrest must inform the person to be arrested of the intention to arrest the person, and of the cause of the arrest, unless:

1. The person to be arrested then is engaged in the commission of an offense;
2. Such person is pursued immediately after its commission or after an escape;
3. Such person flees or forcibly resists before the person making the arrest has opportunity to inform the person; or
4. The giving of such information will imperil the arrest.

**29-06-22. When a private person may break into a building.**

A private person, in order to make an arrest when a felony was committed in the arresting person's presence, as authorized in section 29-06-20, if the person is refused admittance after the person has announced the person's purpose, may break open a door or window of any building in which the person to be arrested is, or is reasonably believed to be.

**29-06-23. Arrested by private person - Duty - Taken before magistrate.**

A private person who has arrested another for the commission of a public offense, without unnecessary delay, shall take the person before a magistrate or deliver the person to a peace officer.

**29-06-24. Offensive weapons taken - Delivery to magistrate.**

Any person making a lawful arrest shall take from the person arrested all offensive weapons which the person arrested may have and shall deliver them to the magistrate before whom the person arrested is taken.

**29-06-25. Procedure against person arrested without warrant.**

When an arrest is made by a peace officer or a private person without a warrant, the person arrested without unnecessary delay must be taken:

1. Before the nearest or most accessible magistrate in the county where the arrest is made; or
2. If there is no magistrate in said county qualified to act, then before the nearest or most accessible magistrate authorized to act for the county where the arrest is made.

A complaint stating the charge against the person arrested must be made before such magistrate, as is provided in rule 5 of the North Dakota Rules of Criminal Procedure.

**29-06-26. Who may break door to liberate self.**

Any person who has lawfully entered a house for the purpose of making an arrest, or who while therein makes an arrest, may break open the door or window thereof, if detained therein, when necessary to exit the house, and an officer may do the same when necessary for the purpose of liberating a person who, acting in the officer's aid, lawfully enters for the purpose of making an arrest and is detained therein.

**29-06-27. Shoplifting - Arresting person exempt from liability.**

Repealed by S.L. 1975, ch. 454, § 6.