

## **CHAPTER 29-26 JUDGMENT AND SENTENCE**

### **29-26-01. Judgment after conviction - Time.**

Superseded by N.D.R.Crim.P., Rule 32.

### **29-26-02. Time specified for pronouncing judgment.**

Superseded by N.D.R.Crim.P., Rule 32.

### **29-26-03. Judgment - Where rendered.**

Judgment must be rendered in open court unless for cause its rendition is deferred.

### **29-26-04. Defendant's presence - Felony or misdemeanor.**

Superseded by N.D.R.Crim.P., Rule 43.

### **29-26-05. Officer to produce defendant.**

When the defendant is in custody, the court may direct the officer in whose custody the defendant is to bring the defendant before it for judgment, and the officer must do so accordingly.

### **29-26-06. Bench warrant if defendant does not appear for judgment.**

If the defendant has been discharged on bail, or has deposited money in lieu thereof, and does not appear for judgment when the defendant's personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of money deposited, may direct the clerk to issue a bench warrant for the defendant's arrest.

### **29-26-07. Issuance of bench warrant - Duty of clerk.**

The clerk, on the application of the state's attorney, at any time after the order directing a bench warrant to be issued, whether the court is sitting or not, shall issue a bench warrant into one or more counties.

### **29-26-08. Form of bench warrant.**

Superseded by N.D.R.Crim.P., Rule 58.

### **29-26-09. Bench warrant service.**

A bench warrant may be served in any county of the state and in the same manner as a warrant of arrest.

### **29-26-10. Disposition of defendant on arrest.**

Whether a bench warrant issued as provided in section 29-26-06 is served in the county in which it was issued or in another county, the officer shall arrest the defendant and bring the defendant before the court, or commit the defendant to the officer mentioned in the warrant, according to the command thereof.

### **29-26-11. Defendant informed of rights.**

When a defendant appears for judgment, the defendant must be informed by the court, or by the clerk under its direction, of the nature of the charge against the defendant, and of the defendant's plea, and the verdict, if any, thereon, and must be asked whether the defendant has any legal cause to show why judgment should not be pronounced against the defendant.

### **29-26-12. Defendant may show cause against judgment.**

The defendant may show cause against pronouncement of judgment:

1. That the defendant is insane;

2. That the defendant has good cause to offer, either in arrest of judgment or for a new trial, in which case the court may order the judgment to be deferred, and may proceed to decide upon the motion in arrest of judgment or for a new trial;
3. That the defendant is not the person against whom the verdict was rendered; or
4. That the defendant has been pardoned of the offense for which judgment is to be rendered.

**29-26-13. Procedure when insanity alleged as cause for not pronouncing sentence.**

When the cause alleged for not pronouncing sentence is insanity, the court, if there is reasonable ground to believe that the defendant is insane, shall postpone the pronouncement of judgment and shall proceed to have the defendant's mental condition determined in the manner prescribed in this title, so far as applicable, for the determination of the mental condition of a defendant before or during trial. Whenever it is determined that the defendant is or has become sane, the defendant must be brought before the court for judgment.

**29-26-14. Procedure when nonidentity or pardon is alleged as cause for not pronouncing sentence.**

When the reason alleged for not pronouncing sentence is that the person brought before the court to be sentenced is not the person against whom the verdict was rendered, or that the defendant has been pardoned of the offense charged, the court shall postpone the pronouncement of judgment, if necessary, for the purpose of hearing evidence relating to the identity or pardon of such person, and on proof of nonidentity or pardon, as the case may be, shall discharge such person from custody, unless the person is in custody on some other charge.

**29-26-15. Judgment rendered.**

Superseded by N.D.R.Crim.P., Rule 32.

**29-26-16. Court to hear evidence - Degree of crime.**

Upon a plea of guilty of a crime divided into degrees, the court, if such plea is accepted and the defendant does not designate in the defendant's plea the degree thereof, before passing sentence, shall determine the degree, and the provisions, so far as applicable, of section 29-26-18 and of rule 32 of the North Dakota Rules of Criminal Procedure shall govern in said determination.

**29-26-17. Extent of punishment - Aggravation or mitigation - Hearing.**

After a plea or verdict of guilty, in a case when a discretion is conferred upon the court as to the extent of the punishment, the court, upon the suggestion of either party that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment, in its discretion, may hear the same summarily at a specified time, and upon such notice to the adverse party as it may direct.

**29-26-18. Evidence in aggravation or mitigation of punishment - How presented.**

Circumstances in aggravation or mitigation of punishment must be presented by testimony of witnesses examined in open court, except when a witness is so sick or infirm as to be unable to attend, that witness's deposition may be taken by a magistrate of the county out of court, at a specified time and place, upon such notice to the adverse party as the court may direct, the criminal record of the defendant furnished by the federal bureau of investigation or the state superintendent of criminal identification and reports of the state parole office may be received by the court without verification or other foundation, and, results of psychological testing and psychiatric examination, certified in writing, may be received by the court without verification or other foundation, subject to such inspection and confrontation of witnesses as the court may permit or require in the interests of justice.

**29-26-19. Other evidence prohibited.**  
Superseded by N.D.R.Crim.P., Rule 32.

**29-26-20. Successive terms of imprisonment.**  
Repealed by S.L. 1973, ch. 116, § 41.

**29-26-21. Judgment for fine and costs.**

A judgment that the defendant pay a fine and costs may not direct that the defendant be imprisoned until both the fine and costs are satisfied. Response to nonpayment of a fine must be as provided in section 12.1-32-05.

**29-26-22. Judgment for fines - Court administration fee - Community service supervision fee - Special funds - Docketing and enforcement. (Retroactive application - [See note](#))**

1. In all criminal cases except infractions, upon a plea or finding of guilt, the court shall impose a court administration fee in lieu of the assessment of court costs. The court administration fee must include a fee of one hundred twenty-five dollars for a class B misdemeanor, two hundred dollars for a class A misdemeanor, four hundred dollars for a class C felony, six hundred fifty dollars for a class B felony, and nine hundred dollars for a class A or AA felony.
2. In addition, in all criminal cases except infractions, the court shall impose an indigent defense and court facilities fee of one hundred dollars. Of the additional one hundred dollar court administration fee, the first seven hundred fifty thousand dollars collected per biennium must be deposited in the indigent defense administration fund, which must be used for indigent defense services in this state, and the next four hundred sixty thousand dollars collected per biennium must be deposited in the court facilities improvement and maintenance fund. After the minimum thresholds have been collected, one-half of the additional court administration fee must be deposited in each fund.
3. In addition to any fees that may be imposed under subsections 1 and 2, the court shall impose upon each defendant who receives a sentence that includes community service a community service supervision fee of twenty-five dollars. The community service supervision fee must be deposited in the community service supervision fund. The fees deposited in this fund must be used to provide community service supervision grants subject to legislative appropriations.
4. A court may waive the court administration fee, indigent defense and court facilities fee, or community service supervision fee upon a showing of indigency as provided in section 25-03.1-13. District court administration fees, exclusive of amounts deposited in the indigent defense administration fund and the court facilities and improvement fund, and forfeitures must be deposited in the state general fund. A judgment that the defendant pay a fine or fees, or both, may be docketed and if docketed 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 administration fee or community service supervision fee in installments. When a defendant is assessed administration fees or a community service supervision fee, the court may not impose at the same time an alternative sentence to be served if the fees are not paid.
5. Upon successful completion of an approved adult treatment court program, a court may waive all unpaid fines, fees, and costs imposed in the criminal judgment sentencing the defendant to the treatment court program, except for restitution. For purposes of this subsection, "approved treatment court program" means a district court-supervised treatment program approved by the supreme court.

**29-26-22.1. Judgment for fine, costs, restitution, or reparation in criminal cases - Docketing and enforcement.**

The court, within ten years of the date of entry of a judgment that imposes a fine, imposes a requirement that restitution or reparation be paid, or assesses costs against a defendant, may order the judgment to be docketed by the clerk of court in the judgment docket maintained pursuant to section 28-20-13 in the same manner in which a civil judgment for money is docketed. The docketing of the judgment has the same effect as the docketing of a civil judgment. The docketed judgment may be docketed in any other county in the same manner, it imposes a lien upon the real property owned by the defendant to the same extent, it is subject to the same statute of limitations, and it is enforceable by execution in the same manner as provided for a civil judgment for money. The court may direct a judgment be entered in favor of a person to whom restitution or reparation is ordered to be paid. That person may enforce the judgment as a civil judgment.

**29-26-22.2. Authority to compromise judgment by county commissioners.**

1. If, after a lapse of two years from the filing of a judgment, the board of county commissioners determines the judgment cannot be collected in full, the board of county commissioners may compromise and settle any judgment for fines or costs arising from criminal proceedings which are payable to the state treasurer.
2. The county's compromise or settlement may include a request to the district court to convert any amount still owed to a civil judgment.
3. Upon receipt of a certified copy of the board's action, the state's attorney of the county where the judgment was filed shall file a partial or total satisfaction of the judgment.
4. In the absence of a compromise or settlement, or after one year has passed following the date of a compromise or settlement, the county may contract with a private debt collection company to collect any remaining balance. The county shall deposit any additional revenue collected under this subsection in the county general fund.

**29-26-22.3. Renewal of prior judgments.**

Repealed by omission from this code.

**29-26-22.4. Cost of digital forensic examination.**

An individual convicted of a felony or misdemeanor shall, as part of the sentence imposed by the court, pay for the reimbursement of the cost of any digital forensic examination performed on any personal electronic device in the investigation and prosecution of the crime for which the defendant is convicted. The fee assessed may not exceed one hundred dollars for each defendant. All fees collected under this section must be remitted to the state treasurer for deposit in the internet crimes investigation fund established in section 54-12-37. For purposes of this section, the term "personal electronic device" means any portable electronic device designed for and capable of wireless communication or electronic data retrieval, including a cellular telephone, tablet, laptop, computer, or two-way messaging device.

**29-26-23. Judgment upon conviction entered in minutes - Record.**

When judgment upon a conviction is rendered, the clerk shall enter the same upon the minutes, stating briefly the offense for which the conviction has been had, and, as soon as possible, shall annex together and file the following papers which constitute a record of the action:

1. The information or indictment and all the papers filed in the action, together with a copy of the minutes of the plea;
2. A copy of the minutes of the trial;
3. The written charges given or refused, with endorsements, if any, thereon, and the written instructions given by the court, and the copy of any oral instructions by the court and filed with the clerk; and
4. A copy of the judgment.

**29-26-24. Provisions governing suspension of sentence, probation, and parole not affected by this chapter.**

Nothing in this chapter may be construed as affecting any statute governing suspension of sentence, suspension of imposition of sentence, probation, or parole.