

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 279

HOUSE BILL NO. 1288

(Representative DeKrey)

AN ACT to amend and reenact sections 12.1-08-11, 20.1-02-14.1, and 29-05-31 and subsection 5 of section 39-06.1-03 of the North Dakota Century Code, relating to complaint and summons procedures and administrative hearing appeals; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-08-11 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-11. Fleeing a peace officer Refusing to halt. Any person, other than the driver of a motor vehicle under section 39-10-71, who willfully fails or refuses to stop or who otherwise flees or attempts to elude, in any manner, a pursuing peace officer, when given a visual or audible signal to stop, is guilty of a class B misdemeanor for a first or second offense and a class A misdemeanor for a subsequent offense. A signal to stop complies with this section if the signal is perceptible to the person and:

1. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the vehicle is appropriately marked showing it to be an official law enforcement vehicle; or
2. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform and prominently displays the officer's badge of office.

SECTION 2. AMENDMENT. Section 20.1-02-14.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-14.1. Uniform complaint and summons - Promise to appear - Penalty.

1. There is ~~hereby~~ established a uniform complaint and summons that may be used in cases involving violations of this title or other violations of a state law which occur on property that the department owns, leases, or manages or on sovereign lands as defined by section 61-33-01. Whenever the complaint and summons established by this section is used, the provisions 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 apply.~~ The uniform complaint and summons must be of a form prescribed by the director and approved by the attorney general.

2. The time of court appearance to be specified in the summons must be at least five days after the issuance of the summons unless the defendant demands an earlier hearing.
3. Upon receipt from the defendant of written promise to appear at the time and place specified in the summons, the defendant must be released from custody. After signing a promise to appear, the defendant must be given a copy of the uniform complaint and summons. Any person refusing to give a written promise to appear may be arrested if proper cause exists, or proceeded against by complaint and warrant of arrest as provided in the North Dakota Rules of Criminal Procedure. Defendant's failure to appear at the time and place designated after signing a promise to appear is a class B misdemeanor.

The uniform summons and complaint may not be used if the officer, acting within the officer's discretion, has reason to believe the defendant will not be subject to arrest upon a warrant issued by a magistrate. The halting officer shall forthwith take any person not released upon that person's promise to appear before the nearest or most accessible magistrate. If an individual fails to appear in court after promising to do so, the court may issue an arrest warrant and in addition to other conditions shall order the department to suspend the individual's hunting, fishing, and trapping privileges until after the final disposition of the case.

SECTION 3. 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 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 magistrates or state's attorneys are not required to make another complaint of the offense charged in the uniform complaint and summons.~~ The use of a uniform complaint and summons must comply with the North Dakota Rules of Criminal Procedure and be in substantially the following form:

State of North Dakota)
) ss. In _____ Court,
County of _____) Before Hon. _____;

The undersigned, being sworn, says that, on _____,

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 and there commit

Location _____ City _____
the following offense: _____
MPH in _____
MPH Zone _____

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

Officer _____ LET A WARRANT ISSUE HEREIN Sworn to and subscribed
before me on _____, _____.

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 summoned to appear at the time and place designated below to answer to the charge made against you.

Appearance
Before: Municipal Judge District Ct. _____ A.M./P.M.
Location Month Day Year Time
Dated _____
Officer _____

PROMISE TO APPEAR

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

Dated _____, _____
Defendant _____

(STATE NONCRIMINAL TRAFFIC VIOLATION)

You are 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 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 _____, _____
 Defendant _____

SECTION 4. AMENDMENT. Subsection 5 of section 39-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

5. a. A person may not appeal a finding from a district judge or magistrate that the person committed the violation. If a person is aggrieved by a finding in the municipal court that the person committed the violation, the person may, without payment of a filing fee, appeal that finding to the district court for trial anew. If, after trial in the appellate court, the person is again found to have committed the violation, there may be no further appeal. Notice of appeal under this subsection must be given within thirty days after a finding of commission of a violation is entered by the official. Oral notice of appeal may be given to the official at the time that the official adjudges that a violation has been committed. Otherwise, notice of appeal must be in writing and filed with the official, and a copy of the notice must be served upon the prosecuting attorney. An appeal taken under this subsection may not operate to stay the reporting requirement of subsection 4, nor to stay appropriate action by the licensing authority upon receipt of that report.
- b. The appellate court upon application by the appellant may:
 - (1) Order a stay of any action by the licensing authority during pendency of the appeal, but not to exceed a period of one hundred twenty days;
 - (2) Order a stay and that the appellant be issued a temporary restricted driving certificate by the licensing authority to be effective for no more than one hundred twenty days; or
 - (3) Deny the application.

An application for a stay or temporary certificate under this subdivision must be accompanied by a certified copy of the

appellant's driving record, for the furnishing of which the licensing authority may charge a fee of three dollars. Any order granting a stay or a temporary certificate must be forwarded forthwith by the clerk of court to the licensing authority, which immediately shall issue a temporary certificate in accordance with the order in the manner provided by law. A court may not make a determination on an application under this subdivision without notice to the appropriate prosecuting attorney. A person who violates or exceeds the restrictions contained in any temporary restricted driving certificate issued pursuant to this subdivision is guilty of a traffic violation and must be assessed a fee of twenty dollars.

- c. If the person charged is found not to have committed the violation by the appellate court, the clerk of court shall report that fact to the licensing authority immediately. ¶ Unless the appropriate state's attorney consents to prosecute the appeal, if an appeal under this subsection is from a violation of a city ordinance, the city attorney for the city wherein the alleged violation occurred shall prosecute the appeal. In all other cases, the appropriate state's attorney shall prosecute the appeal.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on January 1, 2010.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 280**SENATE BILL NO. 2119**
(Judiciary Committee)
(At the request of the Supreme Court)

AN ACT to amend and reenact sections 29-17-03 and 29-17-13 of the North Dakota Century Code, relating to selection of prospective jurors; and to repeal sections 29-17-05, 29-17-06, 29-17-07, 29-17-08, 29-17-10, and 29-17-11 of the North Dakota Century Code, relating to selection of jurors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-17-03 of the North Dakota Century Code is amended and reenacted as follows:

29-17-03. Clerk to prepare ballots selection of juror names - Randomized list. At the opening of the court, the clerk shall prepare separate ballots, each containing the name of a person returned as a juror. Such ballots must be folded as nearly alike as possible and so that the name cannot be seen, and must be deposited in a sufficient box select the names of prospective jurors from a randomized list of names developed in accordance with chapter 27-09.1 and supreme court rule.

SECTION 2. AMENDMENT. Section 29-17-13 of the North Dakota Century Code is amended and reenacted as follows:

29-17-13. Number failing, others summoned. If a sufficient number of jurors cannot be ~~obtained from the box~~ selected to form a trial jury, the court, as often as is necessary, may order the sheriff to summon from the body of the county as many persons qualified to serve as jurors as the court deems sufficient to form a jury. The jurors so summoned may be called from the list returned by the sheriff, and as many of them not excused or discharged as may be necessary to complete the jury must be impaneled and sworn.

SECTION 3. REPEAL. Sections 29-17-05, 29-17-06, 29-17-07, 29-17-08, 29-17-10, and 29-17-11 of the North Dakota Century Code are repealed.

Approved March 19, 2009
Filed March 19, 2009

CHAPTER 281

SENATE BILL NO. 2028

(Legislative Council)

(Commission on Alternatives to Incarceration)

AN ACT to amend and reenact section 29-26-22 of the North Dakota Century Code, relating to the community service supervision fee.

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 - Court administration fee - Community service supervision fee - Special funds - Docketing and enforcement.

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 administration fee must include 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 to contract 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 court administration 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 ~~fifty~~ 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 administration 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.

Approved April 24, 2009
Filed April 29, 2009

CHAPTER 282**SENATE BILL NO. 2182**

(Senator Lyson)

(Representative Griffin)

AN ACT to amend and reenact section 29-31.1-02 of the North Dakota Century Code, relating to return of seized property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-31.1-02 of the North Dakota Century Code is amended and reenacted as follows:

29-31.1-02. Disposition of nonforfeitable property. Seized property that is not required as evidence or for use in an investigation may be returned to the owner without the requirement of a hearing, if the person's possession of the property is not prohibited by law, the property is not forfeitable property, and there is no forfeiture proceeding filed on behalf of the seizing agency. The seizing agency shall send notice by regular mail, if the value of the property is less than two hundred fifty dollars, or certified mail, if the value of the property is equal to or greater than two hundred fifty dollars, to the last-known address of any person having an ownership or possessory right in the property stating that the property is released and must be claimed within thirty days. Notice is deemed to have been made upon the mailing of the notice. The notice must state that if no written claim for the property is made upon the seizing agency within thirty days after the mailing of the notice, the property will be deemed abandoned and disposed of accordingly. If there is more than one party who may assert a right to possession or ownership of the property, the seizing agency may not release the property to any party until the expiration of the date for filing claims unless all other claimants execute a written waiver. If there is more than one claim filed for the return of property under this section, at the expiration of the period for filing claims the seizing agency shall file a copy of all such claims with the clerk of the district court and deposit the property with the court in accordance with the provisions of chapter 32-11. If no owner can be located or no claim is filed under this section, the property is deemed abandoned and the seizing agency becomes the owner of the property and may dispose of it in any reasonable manner.

Approved April 8, 2009

Filed April 9, 2009