

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 268

HOUSE BILL NO. 1425

(Representatives Brandenburg, Mitskog)
(Senators Grabinger, Hogan, Wanzek)

AN ACT to create and enact two new subsections to section 12.1-34-02 of the North Dakota Century Code, relating to treatment standards for victims and medical screening; and to amend and reenact section 29-04-03.1 of the North Dakota Century Code, relating to prosecution for sexual abuse of minors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

119 SECTION 1. Two new subsections to section 12.1-34-02 of the North Dakota Century Code are created and enacted as follows:

Access to law enforcement report. Upon request of the child sexual abuse victim over the age of eighteen, the prosecuting attorney or law enforcement authority shall provide the victim with a copy of the law enforcement report corresponding with the victim's case number.

Preservation of evidence. A prosecuting attorney, law enforcement authority, criminal laboratory, or evidentiary storage facility may not destroy or dispose of any evidence to a criminal offense before the limitation period for prosecution for the offense has ended or the offense has been adjudicated.

SECTION 2. AMENDMENT. Section 29-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

29-04-03.1. Prosecution for sexual abuse of minors.

1. Except as provided in subsection 2, a prosecution for a violation of sections 12.1-20-03 through 12.1-20-08 or of section 12.1-20-11 if the victim was under eighteen years of age at the time the offense was committed must be commenced in the proper court within ~~ten~~ twenty-one years after the commission of the offense or, if the victim failed to report the offense within this limitation period, within three years after the offense was reported to law enforcement authorities.
2. If, based upon evidence containing deoxyribonucleic acid or a fingerprint obtained at the time of offense, a suspect is conclusively identified by deoxyribonucleic acid testing after the time period prescribed in subsection 1 has expired, a prosecution may be commenced within three years after the suspect is conclusively identified by the deoxyribonucleic acid testing or fingerprint authentication.

Approved March 21, 2019

Filed March 22, 2019

¹¹⁹ Section 12.1-34-02 was also amended by section 4 of House Bill No. 1252, chapter 117.

CHAPTER 269

HOUSE BILL NO. 1234

(Representatives Roers Jones, Boschee, Satrom)
(Senators Myrdal, Oban)

AN ACT to amend and reenact sections 29-06-05.2 and 29-06-15 of the North Dakota Century Code, relating to the authority of federal agents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-06-05.2 of the North Dakota Century Code is amended and reenacted as follows:

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; 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.

SECTION 2. AMENDMENT. Section 29-06-15 of the North Dakota Century Code is amended and reenacted as follows:

29-06-15. Arrest without warrant - Peace officer - Officer in the United States customs and border protection ~~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. ~~An officer of the United States customs and border protection~~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.

Approved April 25, 2019

Filed April 26, 2019

CHAPTER 270

SENATE BILL NO. 2068

(Judiciary Committee)
(At the request of the Supreme Court)

AN ACT to amend and reenact subsection 1 of section 12.1-32-08 and section 29-26-22.1 of the North Dakota Century Code, relating to docketing of restitution judgments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁰ **SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

1. Before imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount of restitution. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence the court may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court, unless the court states on the record, based upon the criteria in this subsection, the reason it does not order restitution or orders only partial restitution. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property. In determining whether to order restitution, the court shall take into account:
 - a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2.
 - b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.
 - c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

¹²⁰ Section 12.1-32-08 was also amended by section 2 of House Bill No. 1252, chapter 117.

The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the order must be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, unless the court directs otherwise, be filed without filing fee, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced. Upon thirty days' written notice to the victim's last known address, the court may order the judgment imposing a duty to pay restitution or reparation be docketed in the same manner as a civil judgment under section 29-26-22.1.

SECTION 2. AMENDMENT. Section 29-26-22.1 of the North Dakota Century Code is amended and reenacted as follows:

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

The court ~~may~~, 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.

Approved March 14, 2019

Filed March 14, 2019

CHAPTER 271

HOUSE BILL NO. 1444

(Representative Dockter)

AN ACT to amend and reenact section 29-26-22.2 of the North Dakota Century Code, relating to the authority of the county commission to compromise and settle debt obligations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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.

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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 has authority to may compromise and settle any judgment for fines or costs arising from criminal proceedings which are 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 fullstate 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 saidthe county where the judgment was filed shall in accordance therewith make and file a partial or total satisfaction of saidthe judgment as attorney for the county.
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.

Approved April 10, 2019

Filed April 11, 2019

CHAPTER 272

SENATE BILL NO. 2272

(Senators Unruh, Grabinger, Osland)
(Representatives Roers Jones, Schneider)

AN ACT to create and enact chapter 29-29.6 of the North Dakota Century Code, relating to the issuance of a tracking warrant for location information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 29-29.6 of the North Dakota Century Code is created and enacted as follows:

29-29.6-01. Definitions.

As used in this chapter:

1. "Electronic communication service" has the meaning given in subsection 2 of section 29-29.3-01.
2. "Electronic device" means a device that enables access to or use of an electronic communication service, remote computing service, or location information service.
3. "Government entity" means a state or local agency, including a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission or an individual acting or purporting to act for or on behalf of a state or local agency.
4. "Location information" means information concerning the location of an electronic device that, in whole or in part, is generated or derived from or obtained by the operation of an electronic device. This information could include historical cell site location information, real time cell site location information, or any cell site location information from a specific period of time.
5. "Location information service" means the provision of a global positioning service or other mapping, locational, or directional information service.
6. "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communication system.
7. "Tracking warrant" means an order in writing, in the name of the state, signed by a court directed to a peace officer, granting the officer access to location information of an electronic device.

29-29.6-02. Tracking warrant required for location information.

1. Except as provided in subsection 2, a government entity may not obtain the location information of an electronic device without a tracking warrant. A warrant granting access to location information must be issued only if the

government entity shows that there is probable cause the person who possesses an electronic device is committing, has committed, or is about to commit a crime. An application for a warrant must be made in writing and include:

- a. The identity of the government entity's peace officer making the application, and the officer authorizing the application; and
 - b. A statement of the facts and circumstances relied on by the applicant to justify the applicant's belief that a warrant should be issued, including:
 - (1) Details as to the particular offense that has been, is being, or is about to be committed; and
 - (2) The identity of the person, if known, committing the offense whose location information is to be obtained.
2. A government entity may obtain location information without a tracking warrant:
- a. When the electronic device is reported lost or stolen by the owner;
 - b. In order to respond to the user's call for emergency services;
 - c. With the informed, affirmative, documented consent of the owner or user of the electronic device;
 - d. With the informed, affirmative consent of the legal guardian or next of kin of the owner or user if the owner or user is believed to be deceased or reported missing and unable to be contacted; or
 - e. In an emergency situation that involves injury or death to a person who possesses an electronic communications device pursuant to section 8-10-11.

29-29.6-03. Time period and extensions.

1. A tracking warrant issued under this section must authorize the collection of location information for a period not to exceed sixty days, or the period of time necessary to achieve the objective of the authorization, whichever is less.
2. Extensions of a tracking warrant may be granted, but only upon an application for an order and upon the judicial finding required by subdivision b of subsection 1 of section 29-29.6-02. The period of extension must be for a period not to exceed sixty days, or the period of time necessary to achieve the objective for which it is granted, whichever is less.
3. Subsections 1 and 2 apply only to tracking warrants issued for the contemporaneous collection of electronic device location information.

29-29.6-04. Notice - Temporary nondisclosure of tracking warrant.

1. Within a reasonable time, but not later than ninety days after the court unseals the tracking warrant under this section, the issuing or denying judge shall cause to be served on the persons named in the warrant and the application an inventory which shall include notice of:

- a. The fact of the issuance of the warrant or the application;
 - b. The date of the issuance and the period of authorized, approved, or disapproved collection of location information, or the denial of the application; and
 - c. The fact that during the period location information was or was not collected.
2. A tracking warrant authorizing collection of location information must direct that:
 - a. The warrant be sealed for a period of ninety days; and
 - b. The warrant be filed with the court administrator within ten days of the expiration of the warrant.
 3. The prosecutor may request that the tracking warrant, supporting affidavits, and any order granting the request not be filed. An order must be issued granting the request in whole or in part if, from affidavits, sworn testimony, or other evidence, the court finds reasonable grounds exist to believe that filing the warrant may cause the search or a related search to be unsuccessful, create a substantial risk of injury to an innocent person, or severely hamper an ongoing investigation.
 4. The tracking warrant must direct that following the commencement of any criminal proceeding utilizing evidence obtained in or as a result of the search, the supporting application or affidavit must be filed either immediately or at any other time as the court directs. Until such filing, the documents and materials ordered withheld from filing must be retained by the judge or the judge's designee.

Approved March 14, 2019

Filed March 14, 2019