

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 301

HOUSE BILL NO. 1145

(Representatives Schauer, Boschee, O'Brien, Schneider, Swiontek, Wagner, Warrey,
Weisz)
(Senators Hogan, K. Roers, Weber)

AN ACT to amend and reenact section 29-04-02.1 of the North Dakota Century Code, relating to prosecution for gross sexual imposition; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-04-02.1 of the North Dakota Century Code is amended and reenacted as follows:

29-04-02.1. Prosecution for ~~gross sexual imposition~~ a felony sexual offense or human trafficking.

Except as otherwise provided by law, a prosecution for a felony violation of ~~subdivision a of subsection 1 of section 12.1-20-03~~chapter 12.1-20 or for the crime of human trafficking must be commenced in the proper court within seven years after the commission of the offense.

Approved March 29, 2023

Filed March 30, 2023

CHAPTER 302

SENATE BILL NO. 2286

(Senators Schaible, Kessel)
(Representatives Heinert, Rohr)

AN ACT to create and enact a new section to chapter 29-06 of the North Dakota Century Code, relating to peace officers acting outside their jurisdiction; and to amend and reenact sections 11-15-03, 25-03.1-25, and 40-20-05 of the North Dakota Century Code, relating to duties of the sheriff, powers and duties of the chief of police and police officers, and detentions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-15-03 of the North Dakota Century Code is amended and reenacted as follows:

11-15-03. Duties of sheriff.

1. The sheriff shall:
 1. a. Preserve the peace.
 2. b. Arrest and take before the nearest magistrate, or before the magistrate who issued the warrant, all persons who attempt to commit or who have committed a public offense.
 3. c. Prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to the sheriff's knowledge.
 4. d. Attend each term of the district court held within the county; obey its lawful orders and directions; and act as crier thereof and make proclamation of the opening and adjournment of court and of any other matter under its direction.
 5. e. Command the aid of as many inhabitants of the county as the sheriff may think necessary in the execution of the sheriff's duties.
 6. f. Take charge of and keep the county jail and the prisoners therein.
 7. g. Endorse upon all notices and process received by the sheriff for service the year, month, day, hour, and minute of reception, and issue therefor to the person delivering it, on payment of the sheriff's fees, a certificate showing the names of the parties, the title of the paper, and the time of its reception.
 8. h. Serve all process or notices in the manner prescribed by law.
 9. i. Certify under the sheriff's hand upon each process or notice the time and manner of service, or if the sheriff fails to make service, the reasons for failure, and return the same without delay.

10. j. Perform such other duties as are required of the sheriff by law.
11. k. Enforce, personally or through deputies, all statutes defining traffic violations denominated noncriminal by section 39-06.1-02.
2. The sheriff maintains the powers under subsection 1 throughout the entire state during a transport or detention under section 3 of this Act.

SECTION 2. AMENDMENT. Section 25-03.1-25 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-25. Detention or hospitalization - Emergency procedure.

1. When a peace officer, physician either in person or directing an emergency medical services professional, psychiatrist, physician assistant, psychologist, advanced practice registered nurse, or mental health professional has reasonable cause to believe that an individual is a person requiring treatment and there exists a serious risk of harm to that individual, others, or property of an immediate nature that considerations of safety do not allow preliminary intervention by a magistrate, the peace officer, physician either in person or directing an emergency medical services professional, psychiatrist, physician assistant, psychologist, advanced practice registered nurse, or mental health professional, using the screening process set forth in section 25-03.1-04, may cause the individual to be taken into custody and detained at a treatment facility as provided in subsection 3, and subject to section 25-03.1-26, except that if emergency conditions exist that prevent the immediate conveyance of the individual to a public treatment facility, a private facility that has adequate resources and capacity to hold that individual may hold the individual in anticipation of conveyance to a public treatment facility for up to twenty-three hours:
 - a. Without conducting an immediate examination required under section 25-03.1-26; and
 - b. Without following notice and hearing requirements for a transfer to another treatment facility required under subsection 3 of section 25-03.1-34.
2. If a petitioner seeking the involuntary treatment of a respondent requests that the respondent be taken into immediate custody and the magistrate, upon reviewing the petition and accompanying documentation, finds probable cause to believe that the respondent is a person requiring treatment and there exists a serious risk of harm to the respondent, others, or property if allowed to remain at liberty, the magistrate may enter a written order directing that the respondent be taken into immediate custody and be detained as provided in subsection 3 until the preliminary or treatment hearing, which must be held no more than seven days after the date of the order.
3. Detention under this section may be:
 - a. In a treatment facility where the director or superintendent must be informed of the reasons why immediate custody has been ordered. The facility may provide treatment that is necessary to preserve the respondent's life or to appropriately control behavior by the respondent which is likely to result in physical injury to self or to others if allowed to continue, but may not otherwise provide treatment to the respondent without the respondent's consent; or

- b. In a public or private facility in the community which is suitably equipped and staffed for the purpose. Detention in a jail or other correctional facility may not be ordered except in cases of actual emergency when no other secure facility is accessible, and then only for a period of not more than twenty-four hours and under close supervision.
4. Immediately upon being taken into custody, the individual must be advised of the purpose of custody, of the intended uses and possible effects of any evaluation that the individual undergoes, and of the individual's rights to counsel and to a preliminary or treatment hearing.
5. Upon arrival at a facility the peace officer, physician, physician assistant, psychiatrist, psychologist, advanced practice registered nurse, or mental health professional who conveyed the individual or who caused the individual to be conveyed shall complete an application for evaluation and shall deliver a detailed written report from the peace officer, physician, physician assistant, psychiatrist, psychologist, advanced practice registered nurse, or the mental health professional who caused the individual to be conveyed. The written report must state the circumstances under which the individual was taken into custody. The report must allege in detail the overt act that constituted the basis for the beliefs that the individual is a person requiring treatment and that, because of that individual's condition, there exists a serious risk of harm to that individual, others, or property if the individual is not immediately detained.
6. A peace officer maintains the peace officer's power of arrest, detention, and transport, throughout the entire state during a transport or detention in accordance with this section.

SECTION 3. A new section to chapter 29-06 of the North Dakota Century Code is created and enacted as follows:

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.

SECTION 4. AMENDMENT. Section 40-20-05 of the North Dakota Century Code is amended and reenacted as follows:

40-20-05. Chief of police and police officers - Powers and duties - Hot pursuit.

1. The chief of police shall perform duties prescribed by the governing body for the preservation of the peace. The chief of police may administer oaths to police officers under the chief's supervision. Within the city limits, and for a distance of one and one-half miles [2.41 kilometers] in all directions outside the city limits, the police officers of the city shall perform the duties and exercise the powers of peace officers as defined and prescribed by the laws of this state.
2. A police officer in "hot pursuit" may continue beyond the one and one-half mile [2.41 kilometers] limit to make an arrest, in obedience to a warrant or without a warrant under the conditions of section 29-06-15, if obtaining the aid of peace officers having jurisdiction beyond that limit would cause a delay permitting escape. As used in this subsection, "hot pursuit" means the immediate pursuit of an individual endeavoring to avoid arrest. The jurisdiction limits in subsection 1 do not apply to a police officer acting pursuant to a joint powers agreement with another jurisdiction.
3. Police officers shall serve and execute any warrant, writ, process, order, or notice issued by a municipal judge within the city in any civil or criminal action or proceeding for or on account of a violation of any city ordinance or in any action or proceeding in which the city is a party or is interested beneficially. The police, within the limits prescribed in this section, may serve and execute all writs and process issued by justices in civil actions. In addition to the duties set out in this section, the police shall perform such other duties as may be prescribed by ordinance or statute.
4. A police officer maintains the powers under this section throughout the entire state during a transport or detention under section 3 of this Act.

Approved April 11, 2023

Filed April 12, 2023

CHAPTER 303

HOUSE BILL NO. 1453

(Representatives Schneider, Bahl, Conmy, Hanson, Klemin, Roers Jones, Satrom)
(Senators Braunberger, Dwyer, Mathern)

AN ACT to create and enact a new section to chapter 29-08 of the North Dakota Century Code, relating to a uniform bail schedule initiative; and to provide for a legislative management report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 29-08 of the North Dakota Century Code is created and enacted as follows:

Supreme court uniform bail schedule initiative - Report.

1. The supreme court shall establish a uniform bail schedule to apply when an individual has been taken into custody and has not yet appeared before the district court for a violation of a state offense to achieve substantial uniformity of bail in district court.
2. The uniform bail schedule must be established in cooperation with the district court.
3. When establishing the uniform bail schedule, the supreme court shall consider the following factors when setting the standard amount of bail:
 - a. Maintaining public safety;
 - b. The severity of the offense justifying the bail amount;
 - c. The need to assure defendants appear for court hearings;
 - d. Equal treatment within the judicial system;
 - e. Constitutional limits and requirements related to bail;
 - f. Prohibiting excessive bail; and
 - g. Any other factors considered by the supreme court to be relevant.
4. The supreme court may adjust the standard bail amounts established by the uniform bail schedule as needed or when requested by the district court.
5. The uniform bail schedule must be implemented by August 1, 2024.
6. Before September 1, 2024, the supreme court shall provide a report to the legislative management regarding the implementation of the uniform bail schedule and the standard amount of bail for each state offense.

Approved March 15, 2023

Filed March 16, 2023

CHAPTER 304

SENATE BILL NO. 2106

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

AN ACT to repeal sections 29-16-01, 29-21-16, and 29-22-33 of the North Dakota Century Code relating to issues of fact, plea of once in jeopardy, and special verdicts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 29-16-01, 29-21-16, and 29-22-33 of the North Dakota Century Code are repealed.

Approved March 14, 2023

Filed March 15, 2023

CHAPTER 305

HOUSE BILL NO. 1289

(Representatives Roers Jones, Bahl, Ista, Klemin, Rios, Satrom, Schneider)
(Senators Hogue, Larson)

AN ACT to create and enact a new subsection to section 29-26-22 of the North Dakota Century Code, relating to waiver of fines, fees, and costs upon successful completion of an approved adult drug court program; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 29-26-22 of the North Dakota Century Code is created and enacted as follows:

Upon successful completion of an approved adult drug court program, a court may waive all unpaid fines, fees, and costs imposed in the criminal judgment sentencing the defendant to the drug court program, except for restitution. For purposes of this subsection, "approved drug court program" means a district court-supervised treatment program approved by the supreme court.

SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively to an offense committed before the effective date of this Act, but only for a defendant who successfully completes an approved drug court program after the effective date of this Act.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 11, 2023

Filed April 12, 2023

CHAPTER 306

SENATE BILL NO. 2043

(Judiciary Committee)
(At the request of the Attorney General)

AN ACT to create and enact section 29-29.1-01.1 of the North Dakota Century Code, relating to a warrant for electronic communication information; to amend and reenact subsection 1 of section 29-29.1-02, subsection 1 of section 29-29.1-03, and section 29-29.1-04 of the North Dakota Century Code, relating to requirements for valid issuance and to warrant validity days.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 29-29.1-01.1 of the North Dakota Century Code is created and enacted as follows:

29-29.1-01.1. Warrant for electronic communication information.

1. As used in this section, "Electronic communication information" means any information about an electronic communication or the use of an electronic communication service, limited to the contents of electronic communications and precise or approximate location of the target sender or target recipient at any point during the communication.
2. Notwithstanding chapter 29-29, any official or employee of the state or of a unit of county or local government of the state may, under the conditions specified in this section, obtain a warrant requiring disclosure of electronic communication information.
3. A warrant issued under this section may authorize the seizure of electronic storage media or the seizure or copying of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant.
4. Under this section, the time for executing the warrant refers to the seizure or onsite copying of the media or information, and not to any later offsite copying or review.
5. The issuing magistrate may grant an extension of a warrant on the owner or the possessor of electronic communication information upon an application under oath stating the owner or the possessor has not produced the requested electronic communication information within ten days and that an extension is necessary to achieve the purposes for which the search warrant was granted. An extension may not exceed thirty days.

SECTION 2. AMENDMENT. Subsection 1 of section 29-29.1-02 of the North Dakota Century Code is amended and reenacted as follows:

1. The one seeking the warrant shall establish under oath or affirmation that the property or electronic communication information to be searched or inspected is to be searched or inspected as a part of a legally authorized program of

inspection which naturally includes that property or electronic communication information, or that there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such a search or inspection of that property or electronic communication information;

SECTION 3. AMENDMENT. Subsection 1 of section 29-29.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. It must be signed by the issuing magistrate and must bear the date and hour of its issuance above the magistrate's signature with a notation that the warrant is valid for only ~~twenty-four hours~~ ten days following its issuance;

SECTION 4. AMENDMENT. Section 29-29.1-04 of the North Dakota Century Code is amended and reenacted as follows:

29-29.1-04. Warrant valid for ~~twenty-four hours~~ ten days.

Any warrant issued under this chapter for a search or inspection is valid for only ~~twenty-four hours~~ ten days after its issuance, must be personally served upon an owner or possessor of the property, or upon any person present on the premises if an owner or possessor cannot reasonably be found between the hours of 8:00 a.m. and 8:00 p.m., and must be returned within forty-eight hours of service except as provided in section 29-29.1-01.1.

Approved March 27, 2023

Filed March 28, 2023

CHAPTER 307

HOUSE BILL NO. 1087

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

AN ACT to create and enact a new section to chapter 29-32.1 of the North Dakota Century Code, relating to summary disposition; and to amend and reenact section 29-32.1-09 of the North Dakota Century Code, relating to summary disposition and dismissal.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-32.1-09 of the North Dakota Century Code is amended and reenacted as follows:

29-32.1-09. Summary disposition and dismissal.

1. The court, on its own motion, may enter a judgment denying a meritless application on any and all issues raised in the application before any response by the state. The court also may summarily deny a second or successive application for similar relief on behalf of the same applicant and may summarily deny any application when the issues raised in the application have previously been decided by the appellate court in the same case.
2. The court, on its own motion, may dismiss any grounds of an application which allege ineffective assistance of postconviction counsel. An applicant may not claim constitutionally ineffective assistance of postconviction counsel in proceedings under this chapter.
3. ~~The court may grant a motion by either party for summary disposition if the application, pleadings, any previous proceeding, discovery, or other matters of record show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.~~
4. ~~If an evidentiary hearing is necessary, the court may determine which issues of material fact are in controversy and appropriately restrict the hearing.~~

SECTION 2. A new section to chapter 29-32.1 of the North Dakota Century Code is created and enacted as follows:

Summary disposition.

1. The court may grant a motion by either party for summary disposition if the application, pleadings, any previous proceeding, discovery, or other matters of record show that no genuine issues exist as to any material fact and the moving party is entitled to judgment as a matter of law.
2. If an evidentiary hearing is necessary, the court may determine which issues of material fact are in controversy and appropriately restrict the hearing.

Approved March 14, 2023

Filed March 15, 2023