the order for the suspension of the execution of the sentence thereunder, and the reasons therefor, and to certify the same to the clerk of the State Board of Pardons, and also to the Warden of the Penitentiary. Upon entry in the records of the court of the order for such probation, the defendant shall be released from custody as soon as the requirements of the Board of Pardons have been properly and fully met.

Approved March 7, 1939.

CRIME

CHAPTER 130

H. B. No. 375—(Shure)

BOARD OF PARDONS, POWERS, DUTIES AND PROCEDURE

An act to amend and re-enact Sections 11105, 11106 and 11107, Compiled Laws of the State of North Dakota for the year 1913 relating to the Board of Pardons, the powers and duties thereof, and the procedure before such board, and providing for the appointment of parole officers and other assistants, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Section 11105, Compiled Laws of North Dakota for 1913, be and the same is amended and re-enacted to read as follows:

§ 11105. All applications for pardon, parole, reprieve, or commutation of sentence shall be filed with the clerk of the Board of Pardons. Applications for pardon shall be heard only at the two regular meetings of the board, appointed to be held respectively on the second day of June and the second day of December of each year. All applications for pardon must be filed at least thirty days before the regular meeting of the board at which hearing is sought. Application for parole may be heard at either regular or special meetings, and shall come on for hearing pursuant to such notice as the Board of Pardons may prescribe. Notice of all applications for pardon, parole, reprieve or commutation, and of the time and place of hearing, shall be given by the clerk of the Board of Pardons to the judge who presided at the trial, and if he is no longer in office, notice shall also be given to his successor in office, and to the state's attorney who prosecuted the action, and if he is no longer in office, notice shall also be given to his successor in office. Such notice shall set forth the name of the person, or the persons, on

whose behalf application is made; the crime of which he was convicted; the time and place of conviction; and the term of imprisonment; and the name of the judge who presided and the state's attorney who prosecuted. Service of such notice shall be made by registered mail, and in cases of murder, manslaughter in the first degree, rape by force, kidnapping, or first degree robbery such notice shall be posted in a conspicuous place at the front door of the courthouse of such county for four consecutive weeks prior to said hearing. Proof of the posting of said notice shall be filed with the clerk of the board before hearing. Provided that a reprieve in capital cases may be granted, as provided in Section 11100, as amended by Chapter 248 of the Laws of 1935, without such notice. Provided, further that an application for pardon, commutation or parole may, also, be heard at a special meeting, called in case of emergency, under Section 11100, C. L. 1913, as amended by Chapter 248, Laws of 1935; but no such application shall be heard unless there is filed a written statement signed by the applicant or someone in his behalf, setting forth the facts as to the emergency, and the board shall first determine whether an emergency does in fact exist; and if it finds there is no emergency, no further action shall be taken. If the board finds there is an emergency, then a hearing may be had upon such notice to the judge and the state's attorney as the board may deem sufficient.

§ 2. AMENDMENT.] That Section 11106 of the Compiled Laws of North Dakota for 1913, be amended and re-enacted as follows:

§ 11106. CLERK OF BOARDS. RECORDS AND FILES. PAROLE OFFICERS.] The three ex officio members of the Board of Pardons, to-wit: the Governor, Attorney General and Chief Justice of the Supreme Court, shall appoint a clerk for the board, who shall keep a docket of all applications filed and of all action taken thereon, and preserve a record of every petition received for a pardon, parole, reprieve or commutation of sentence and of every letter or paper filed or appearance made in connection therewith, and of every pardon, parole, reprieve or commutation of sentence granted or refused, and the reason assigned therefor. A complete and accurate filing system of all proceedings before said board shall be maintained by the clerk. The clerk shall keep all files and records and perform such duties in relation thereto as shall be prescribed by the board, and all such records and files shall be kept and preserved in the office of said clerk. The clerk shall also perform such other duties as may be assigned to him by the board. The said ex officio members of the Board of Pardons shall appoint one or more parole officers, one of whom may be the clerk of said board. Such parole officer or officers shall have supervision over and look after the welfare of persons whose sentences have been suspended or who have been paroled. It shall be the duty of such parole officers to keep a complete record of the persons under their supervision, and

make such reports as the board shall require. It shall also be their duty to make such investigations, and perform such other duties in connection with applications for pardon, commutation of sentence or parole, and otherwise, as may be prescribed by the Board of Pardons.

§ 3. AMENDMENT.] That Section 11107 of the Compiled Laws of North Dakota for 1913 be amended and re-enacted to read as follows:

§ 11107. POWERS OF THE BOARD.] The Board of Pardons shall supply itself with a seal with which every pardon, parole, reprieve or commutation of sentence shall be attested. It may issue process requiring the presence of any person before it, or the presence of any officer before it, with or without books and papers, in the matter pending before said board. It may employ psychiatrists or specialists for mental or medical examination of applicants, and may take whatever reasonable steps it may deem necessary to a proper determination of any matter before it. The Board of Pardons shall have the power and authority to make reciprocal arrangements with parole boards or officers of other States for parole of prisoners and juvenile delinquents beyond State lines.

§ 4. All acts or parts of acts in conflict herewith are hereby repealed.

§ 5. If any section or part of any section of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid and unconstitutional, such unconstitutionality shall not affect, impair, or invalidate the remainder of this act, and it is hereby stated by the legislature that it would have passed the remainder of the act if it had known that such part or parts would be declared unconstitutional.

§ 6. This act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 16, 1939.

CHAPTER 131

H. B. No. 242—(Bergesen)

BURGLARY IN THIRD DEGREE

An act to amend and re-enact Section 9873 of the Compiled Laws of the State of North Dakota for the year 1913 to define the crime of burglary in the third degree.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Section 9873 of the Compiled Laws of the State of North Dakota for the year 1913 is hereby amended and re-enacted to read as follows:

§ 9873. BURGLARY IN THIRD DEGREE. OTHER BUILDINGS.] Every person who breaks and enters, in the day or in the nighttime, either:

1. Any building within the curtilage of a dwelling house, but not forming a part thereof; or,

2. Any building or any part of any building, booth, tent, railroad car, motor vehicle or trailer, vessel or other structure or erection in which any property is kept, with intent to steal therein or to commit any felony, is guilty of burglary in the third degree.

Approved March 1, 1939.

CHAPTER 132

H. B. No. 301—(Bergesen)

CRIMINAL INDICTMENT AND INFORMATION

An act to make uniform the law on criminal indictment and information; defining terms included in this act; providing what an indictment or information must or need not contain; setting forth forms thereof; providing for bills of particular; in general covering and interpreting the law pertaining to indictments and informations, and repealing all acts or parts of acts in conflict herewith.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. DEFINITIONS.] In this chapter: (a) The singular number included the plural and the plural included the singular.

(b) The masculine gender includes the feminine and neuter genders.

(c) The words "person," "defendant" and similar words include, unless contrary intention appears a public or a private corporation.

(d) The term "act" includes omission to act.

(e) The word "property" included any matter or thing other than a person, upon or in respect to which any offense may be committed.

(f) The words "indictment" and "information," unless a contrary intention appears, include any count thereof.

(g) The terms "writing" and "written" include words printed, painted, typed, engraved, lithographed, photographed, or otherwise copied, traced or made visible to the eye.

(h) The term "the court," unless a contrary intention appears, means the court before which the trial is had.

§ 2. CAPTION, COMMENCEMENT, AMENDMENT.] (1) Whenever an objection is made that an indictment or information does not contain a caption or commencement, a caption may be prefixed to, and a commencement may be inserted in, the indictment or information; and any defect, error or omission in a caption or commencement may be amended as of course, at any stage of the proceedings, and shall be in any event cured by a verdict.

(2) It is unnecessary to allege that the grand jurors were impanelled, sworn or charged, or that they present the indictment upon their oaths or affirmations.

§ 3. CONCLUSION.] The indictment or information need contain no formal conclusion.

§ 4. SUBSCRIPTION AND VERIFICATION OF INFORMATION.] (1) All informations shall be subscribed by the prosecuting attorney. Except in cases where the defendant has been held to answer in a preliminary examination, the information shall be verified by the oath of the prosecuting attorney or that of the complainant or of some other person. When the information is verified by the prosecuting attorney, it shall be sufficient if the verification is upon information and belief.

(2) No objection to an information on the ground that it was not subscribed or verified, as above provided, shall be made after moving to quash or pleading to the merits.

§ 5. FORM OF INDICTMENT.] The indictment may be in substantially the following form:

In the (here state the name of the court) the_____day of _____, 19____. The State (Commonwealth, People) of _____vs. A. B.

The grand jurors of the county of_____accuse A. B. of (here charge the offense in one of the ways mentioned in Section 7 — e.g., murder; assault with intent to kill, poisoning an animal contrary to Section 31 of the Penal Code) and charge that (here the particulars of the offense may be added with a view to avoiding the necessity for a bill of particulars).

§ 6. FORM OF INFORMATION.] The information may be in substantially the following form:

In the (here state the name of the court) the_____day of _____, 19____. The State (Commonwealth, People) of _____vs. A. B.

X. Y. (here state the title of the prosecuting attorney) for the county of_____accuses A. B. of (here charge the offense in one of the ways mentioned in Section 7 — e.g., murder; assault with intent to kill, poisoning an animal contrary to Section 31 of the Penal Code) and charges that (here the particulars of the offense may be added with a view to avoiding the necessity for a bill of particulars).

§ 7. CHARGING THE OFFENSE.] (1) The indictment or information may charge, and is valid and sufficient if it charges, the offense for which the defendant is being prosecuted in one or more of the following ways:

(a) By using the name given to the offense by the common law or by a statute.

(b) By stating so much of the definition of the offense, either in terms of the common law or of the statute defining the offense or in terms of substantially the same meaning, as is sufficient to give the court and the defendant notice of what offense is intended to be charged.

(2) The indictment or information may refer to a section or subsection of any statute creating the offense charged therein, and in determining the validity or sufficiency of such indictment or information regard shall be had to such reference.

§ 8. BILLS OF PARTICULARS.] (1) When an indictment or information charges an offense in accordance with the provisions of Section 7, but fails to inform the defendant of the particulars of the offense sufficiently to enable him to prepare his defense, or to give him such information as he is entitled to under the Constitution of this State, the court may, of its own motion, and shall, at the request of the defendant, order the prosecuting attorney to furnish a bill of particulars containing such information as may be necessary for these purposes; or the prosecuting attorney may of his own motion furnish such bill of particulars.

(2) When the court deems it to be in the interest of justice that facts not set out in the indictment or information or in any previous bill of particulars should be furnished to the defendant, it may order the prosecuting attorney to furnish a bill of particulars containing such facts. In determining whether such facts and, if so, what facts should be so furnished, the court shall consider the whole record and the entire course of the proceedings against the defendant.

(3) Supplemental bills of particulars or a new bill may be

ordered by the court or furnished voluntarily under the conditions above stated.

(4) Each supplemental bill shall operate to amend any and all previous bills and a new bill shall supersede any previous bill.

(5) When any bill of particulars is furnished it shall be filed of record and a copy of such bill given to the defendant upon his request.

§ 9. INSUFFIENCY, OR INCONSISTENCY BETWEEN INDICTMENT OR INFORMATION AND BILL OF PARTICULARS—EFFECT OF.] If it appears from the bill of particulars furnished under Section 8 that the particulars therein stated together with any particulars appearing in the indictment or information do not constitute the offense charged in the indictment or information or that the defendant did not commit that offense, or that a prosecution for that offense is barred by the statute of limitations, the court may, and on motion of the defendant or of the prosecuting attorney shall, quash the indictment or information unless the prosecuting attorney shall furnish another bill of particulars which either by itself or together with any particulars appearing in the indictment or information so states the particulars as to make it appear that they constitute the offense charged in the indictment or information and that the offense was committed by the defendant and that it is not barred by the statute of limitations.

§ 10. NAME OF DEFENDANT.] (1) In an indictment, information or bill of particulars it is sufficient for the purpose of identifying the defendant to state his true name, or to state the name, appellation or nickname by which he has been or is known, or, if no better way of identifying him is practicable, to state a fictitious name, or to describe him as a person whose name is unknown, or in any other manner. In stating the true name or the name by which the defendant has been or is known or a fictitious name, it is sufficient to state a surname, a surname and one or more given names, or a surname and one or more abbreviations or initials of a given name or names.

(2) If the defendant is a corporation, it is sufficient to state the corporation name of the defendant, or any name or designation by which it has been or is known or by which it may be identified, without an averment that it is a corporation or that it was incorporated according to law.

(3) If in the course of the proceedings the true name of a person indicted or informed against otherwise than by his true name is disclosed by the defendant to the court or appears in some other manner to the court, the court shall cause the true name of the defendant to be inserted in the indictment, information or bill of particulars and record wherever his name appears otherwise therein, and the proceedings shall be continued against him in his true name.

(4) In naming the defendant, no indictment, information or bill of particulars need further describe him by stating his addition, degree, estate, mystery, occupation, title or residence unless such further description is necessary to charge an offense under Section 7.

(5) In no case is it necessary to prove that the true name of the defendant is unknown to the grand jury or prosecuting attorney.

§ 11. TIME.] (1) An indictment or information need contain no allegation of the time of the commission of the offense unless such allegation is necessary to charge the offense under Section 7.

(2) The allegation is[of] an indictment or information that the defendant committed the offense shall in all cases be considered an allegation that the offense was committed after it became an offense and before the finding of the indictment or information, and within the period of limitations prescribed by law for the prosecution of the offense.

(3) All allegations of the indictment, information and bill of particulars shall, unless stated otherwise, be deemed to refer to the same time.

§ 12. PLACE.] (1) An indictment or information need contain no allegation of the place of the commission of the offense, unless such allegation is necessary to charge the offense under Section 7.

(2) The allegation in an indictment or information that the defendant committed the offense shall in all cases be considered an allegation that the offense was committed within the territorial jurisdiction of the court.

(3) All allegations in the indictment, information and bill of particulars shall, unless stated otherwise, be deemed to refer to the same place.

§ 13. MEANS.] An indictment or information need contain no allegation of the means by which the offense was committed, unless such allegation is necessary to charge the offense under Section 7.

§ 14. VALUE AND PRICE.] An indictment or information need contain no allegation of the value or price of any property, unless such allegation is necessary to charge the offense under Section 7, and in such case it is sufficient to aver that the value or price of the property equals or exceeds the certain value or price which determines the offense. The facts which give the property such value need not be alleged.

§ 15. OWNERSHIP.] (1) An indictment or information need

contain no allegation of ownership of any property, unless such allegation is necessary to charge the offense under Section 7.

(2) In charging an offense in which an allegation of ownership of property is satisfied by proof of possession or right of possession any statement in an indictment, information or bill of particulars which implies possession or right of possession is a sufficient allegation of ownership.

§ 16. INTENT.] (1) An indictment or information need contain no allegation of the intent with which an act was done, unless such allegation is necessary to charge the offense under Section 7.

(2) An allegation generally of an intent to defraud and injure is sufficient without alleging an intent to defraud or injure any particular person, unless such allegation is necessary to charge the offense under Section 7.

§ 17. CHARACTERIZATION OF ACT.] (1) An indictment or information need not allege that the offense was committed or the act done "feloniously" or "traitorously" or "unlawfully" or "with force and arms" or "with a strong hand," nor need it use any phrase of like kind otherwise to characterize the offense, nor need it allege that the offense was committed or the act done "burglariously," "willfully," "knowingly," "maliciously," or "negligently," nor need it otherwise characterize the manner of the commission of the offense unless such characterization is necessary to charge the offense under Section 7.

(2) An indictment or information need not contain the words "as appears by the record" or any other words of similar import.

§ 18. OMISSION OF UNNECESSARY MATTER.] An indictment or information need not state any matter not necessary to be proved.

§ 19. ALLEGATIONS OF PLACES AND THINGS.] Whenever it is necessary in an indictment or information to describe any place or thing in order to charge an offense under Section 7, it is sufficient to describe such place or thing by any term which in common understanding embraces such place or thing and does not include any place or thing which is not by law the subject of, or connected with, the offense.

§ 20. NAME OF PERSON OTHER THAN DEFENDANT.] (1) In an indictment, information or bill of particulars it is sufficient for the purpose of identifying any person other than the defendant to state his true name, or to state the name, appellation or nickname by which he has or is known, or, if no better way of identifying such person is practicable, to state a fictitious name, or to state the name of an office or position held by him, or to describe him as "a certain person," or by words of similar import, or in any other manner. In stating the true name of such person or the name by which such

person has been, or is known, it is sufficient to state a surname, or a surname and one or more given names, or surname and one or more abbreviations or initials of a given name or names.

(2) It is sufficient for the purpose of describing any group or association of persons not incorporated to state the proper name of such group or association, or to state any name or designation by which the group or association has been or is known or by which it may be identified, or to state the names of all the persons in such group or association, or to state the name or names of one or more persons in such group or association, referring to the other or others as "another" or "others."

(3) It is sufficient for the purpose of describing a corporation to state the corporation name of such corporation, or any name or designation by which it has been or is known, or by which it may be identified, without an averment that the corporation is a corporation or that it was incorporated according to law.

(4) In no case is it necessary to aver or prove that the true name of any person, group or association of persons or any corporation is unknown to the grand jury or prosecuting attorney.

(5) If in the course of the trial the true name of any person, group or association of persons, or corporation, described otherwise than by the true name is disclosed by evidence, the court shall cause the true name to be inserted in the indictment, information, bill of particulars and record wherever the name appears otherwise.

§ 21. PROPERTY DESCRIBED AS MONEY.] In an indictment or information in which it is necessary to make an averment as to money, or bullion or gold dust, current by custom and usage as money, treasury notes or certificates, banknotes, or other securities intended to circulate as money, checks, drafts or bills of exchange, it is sufficient to describe the same or any of them as money, without specifying the particular character, number, denomination, kind, species, or nature thereof.

§ 22. DESCRIPTION OF WRITTEN INSTRUMENTS.] Whenever it is necessary in an indictment or information to make an averment relative to any instrument which consists wholly or in part of writing or figures, pictures or designs, it is sufficient to describe such instrument by any name or description by which it is usually known or by which it may be identified, or by its purport, without setting forth a copy or facsimile of the whole or any part thereof. The description, if in a bill of particulars, is sufficient if it sets forth the character and contents of the instrument with such particularity as to enable the defendant to prepare his defense.

§ 23. DESCRIPTION OF WRITTEN MATTER.] Whenever in an indictment or information an averment relative to any spoken or written words or any picture is necessary, it is sufficient to set forth

such spoken or written words by their general purport or to describe such picture generally, without setting forth a copy or facsimile of such written words or such picture. The description, if in a bill of particulars, is sufficient if the defendant is thereby sufficiently informed of the identity of the words or picture concerning which the averment is made so as to enable him to prepare his defense.

§ 24. MEANING OF WORDS AND PHRASES.] The words and phrases used in an indictment, information or bill of particulars are to be construed according to their usual acceptation, except that words and phrases which have been defined by law or which have acquired a legal signification are to be construed according to their legal signification.

§ 25. ALLEGATION OF PRIOR CONVICTIONS.] No indictment or information shall contain an allegation of a prior conviction of the defendant unless such allegation is necessary to charge the offense under Section 7.

§ 26. PRIVATE STATUTES.] In referring in an indictment or information to a private statute or a right derived therefrom it is sufficient to refer to the statute by its title and the day of its passage or in any other manner which identifies the statute, and the court shall thereupon take judicial notice thereof.

§ 27. JUDGMENTS.] In referring in an indictment or information to a judgment or other determination of, or a proceeding before, any court or official, civil or military, it is unnecessary to allege the facts conferring jurisdiction on such court or official, but it is sufficient to allege generally that such judgment or determination was given or made or such proceeding had, in such manner as identifies the judgment, determination or proceeding.

§ 28. EXCEPTIONS.] No indictment or information for an offense created or defined by statute shall be invalid or insufficient merely for the reason that it fails to negative any exception, excuse or proviso contained in the statute creating or defining the offense.

§ 29. ALTERNATIVE OR DISJUNCTIVE ALLEGATIONS.] No indictment or information for an offense which may be committed by the doing of one or more of several acts, or by one or more of several means, or with one or more of several intents, or with one or more of several results, shall be invalid or insufficient for the reason that two or more of such acts, means, intents or results are charged in the disjunctive or alternative.

§ 30. INDIRECT ALLEGATIONS.] No indictment or information shall be invalid or insufficient for the reason that it alleges indirectly and by inference or by way of recital any matters, facts or circumstances connected with or constituting the offense.

§ 31. LIBEL.] No indictment or information for libel shall be invalid or insufficient for the reason that it does not set forth extrinsic facts for the purpose of showing the application to the party alleged to be libelled of the defamatory matter on which the indictment is founded.

§ 32. PERJURY AND KINDRED OFFENSES.] No indictment or information for perjury, or for subornation of, solicitation of, conspiracy or attempt to commit perjury shall be invalid or insufficient for the reason that it does not set forth any part of the records or proceedings with which the oath was connected, or the commission or authority of the court or other official before whom the perjury was committed or was to have been committed, or the form of the oath or affirmation, or the manner of administering the same.

§ 33. OFFENSES DIVIDED INTO DEGREES.] In an indictment or information for an offense which is divided into degrees it is sufficient to charge that the defendant committed the offense without specifying the degree.

§ 34. PARTIES TO OFFENSES.] Every person concerned in the commission of an offense, whether he directly commits the offense or procures, counsels, aids, or abets in its commission, may be indicted or informed against as principal.

§ 35. REPUGNANCY.] No indictment or information that charges an offense in accordance with the provisions of Section 7 shall be invalid or insufficient because of any repugnant allegation contained therein.

§ 36. SURPLUSAGE.] Any allegation unnecessary under existing law or under the provisions of this chapter may, if contained in an indictment, information or bill of particulars, be disregarded, as surplusage.

§ 37. DEFECTS, VARIANCES AND AMENDMENT.] (1) No indictment or information that charges an offense in accordance with the provisions of Section 7 shall be invalid or insufficient because of any defect or imperfection in, or omission of, any matter of form only, or because of any miswriting, misspelling or improper English, or because of the use of sign, symbol, figure or abbreviation, or because of any similar defect, imperfection or omission. The court may at any time cause the indictment, information or bill of particulars to be amended in respect to any such defect, imperfection or omission.

(2) No variance between those allegations of an indictment, information or bill of particulars, which state the particulars of the offense, whether amended or not, and the evidence offered in support thereof shall be ground for the acquittal of the defendant. The court may at any time cause the indictment, information

or bill of particulars to be amended in respect to any such variance, to conform to the evidence.

(3) If the court is of the opinion that the defendant has been prejudiced in his defense upon the merits by any such defect, imperfection or omission or by any such variance the court may because of such defect, imperfection, omission or variance, unless the defendant objects, postpone the trial, to be had before the same or another jury, on such terms as the court considers proper. In determining whether the defendant has been prejudiced in his defense upon the merits, the court shall consider all the circumstances of the case and the entire course of the prosecution.

(4) No appeal, or motion made after verdict, based on any such defect, imperfection, omission or variance shall be sustained unless it is affirmatively shown that the defendant was in fact prejudiced thereby in his defense upon the merits.

§ 38. MISJOINDER, MULTIPLICITY, DUPLICITY AND UNCERTAINTY.] (1) No indictment or information shall be invalid or insufficient for any one or more of the following defects merely:

(a) That there is a misjoinder of the parties defendant.

(b) That there is a misjoinder [multiplicity] of the offenses charged.

(c) That there is duplicity therein.

(d) That any uncertainty exists therein, provided it charges an offense in accordance with Section 7.

(2) If the court is of the opinion that the defects stated in subsection 1, clauses (a), (b) and (c) or any of them exists in any indictment or information it may order the prosecuting attorney to sever such indictment or information into separate indictments or informations or into separate counts, as shall be proper.

(3) If the court is of the opinion that the defect stated in subsection 1, clause (d) exists in any indictment or information it may order that a bill of particulars be filed in accordance with Section 8.

(4) No appeal, or motion made after verdict, based on any of the defects enumerated in this section shall be sustained unless it is affirmatively shown that the defendant was in fact prejudiced in his defense upon the merits.

§ 39. AMENDMENT AFTER VERDICT.] The defendant and the prosecuting attorney are entitled upon motion made by either after verdict and before sentence is pronounced or the defendant is discharged to have the indictment or information amended so as to state the particulars of the offense, as proved, in such a manner that the indictment or information shall without evidence aliunde be such evidence of the offense charged and its particulars as to bar a subsequent prosecution for the same offense constituted by the same particulars.

§ 40. INTERPRETATION OF THE ACT.] Nothing contained in this chapter shall be so construed as to make invalid or insufficient any indictment or information which would have been valid and sufficient under the law existing at the date of the enactment of this chapter.

§ 41. FORMS FOR SPECIFIC OFFENSES.] The following forms may be used in the cases in which they are applicable:

AFFRAY.—A. B. and C. D. made an affray.

ASSAULT.—A. B. assaulted C. D.

ASSAULT AND BATTERY.—A. B. committed an assault and battery upon C. D.

ASSAULT WITH INTENT.—A. B. assaulted C. D. with intent to murder him, (or kill, or rob, or maim him as the case may be).

ARSON.—A. B. committed arson by burning the dwelling house of C. D.

ATTEMPT.—A. B. attempted to steal from C. D. A. B. attempted to commit larceny of the goods of C. D. A. B. attempted to commit burglary of the dwelling of C. D.

BURGLARY.—A. B. committed burglary of the dwelling of C. D.

CONSPIRACY.—A. B. and C. D. conspired together to murder E. F. (or to steal the property of E. F., or to rob E. F.)

FORGERY.—A. B. forged a certain instrument purporting to be a promissory note (or describe the instrument or give its tenor or substance).

LARCENY.—A. B. stole from C. D. one horse.

LIBEL.—A. B. published a libel concerning C. D. in the form of a letter (book, picture, or as the case may be) (the particulars should specify the pages and lines constituting the libel, when necessary, as where it is contained in a book or pamphlet).

MURDER.—A. B. murdered C. D.

MANSLAUGHTER.—A. B. unlawfully killed C. D.

PERJURY.—A. B. committed perjury by testifying as follows (set forth the testimony).

RAPE.—A. B. raped (or ravished) C. D.

ROBBERY.—A. B. robbed C. D.

§ 42. DISCLOSING THE FINDING OF AN INDICTMENT OR THE FILING OF AN INFORMATION FORBIDDEN.] No grand juror or official of any court shall, except in the performance of his official duty, disclose the fact that an indictment has been found or an information filed against any person for an offense, unless such person is in custody or has been admitted to bail for such offense.

§ 43. Filing and Recording of the Indictment or Information.] When an indictment has been presented by the grand jury or an information filed by the prosecuting attorney, it shall be filed by the clerk of the court, and transcribed in a book kept for that purpose. In each case the clerk shall certify in the book that he has compared the transcription with the original, and that the transcription with the original, and that the transcription is a true copy of the original.

§ 44. Inspection of Indictment, Information and Record.] All indictments, informations and the records thereof shall be in the custody of the clerk of the court to which they are presented, and shall not be inspected by any person other than the judge, the clerk, the attorney-general and the prosecuting attorney until the defendant is in custody or has been admitted to bail.

§ 45. Indictment or Information Lost, Mislaid, Etc. — Copy May Be Used.] When an indictment or information, filed as provided for in Section 43, has been so mutilated or obliterated as to be illegible, or has been lost, mislaid, destroyed, stolen or for any other reason cannot be produced at the arraignment or trial of the defendant, he may be arraigned and tried on a copy thereof taken from the clerk's book and certified by the clerk.

§ 46. Copy of Indictment or Information to Be Furnished Defendant.] Every person who has been indicted or informed against for an offense shall be furnished with a copy of the indictment or information together with the indorsements thereon at least twenty-four hours before he is required to plead thereto, and he shall not be required to plead to such indictment or information if it has not been so furnished to him. A failure to furnish such copy shall not affect the validity of any subsequent proceeding against the defendant if he pleads to the indictment or information.

§ 47. Names of Witnesses to Be Endorsed on Indictment or Information.] When an indictment or information is filed, the names of all the witnesses or [r]despondents on whose evidence the indictment or information was based shall be endorsed thereon before it is presented, and the prosecuting attorney shall endorse the indictment or information at such time as the court may by rule or otherwise prescribe the names of such other witnesses as he purposes to call. A failure to so endorse the said names shall not affect the validity or insufficiency of the indictment or information, but the court in which the indictment or information was filed shall, upon application of the defendant, direct the names of such witnesses to be endorsed. No continuance shall be allowed because of the failure to endorse any of the said names unless such application was made at the earliest opportunity and then only if a continuance is necessary in the interest of justice.

§ 48. REPEAL.] All acts or parts of acts in conflict herewith are hereby repealed.

Approved March 13, 1939.

CHAPTER 133

H. B. No. 349—(Gray and Bergesen)

FRESH PURSUIT ACT

An act to make uniform the law on fresh pursuit and authorizing this State to co-operate with other States therein; providing for arrests in this State by officers of other States, defining the term "fresh pursuit"; providing for certification to other States; saving clause.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Any member of a duly organized State, county or municipal peace 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 him on the ground that he is believed to have committed a felony 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 peace unit of this State, to arrest and hold in custody a person on the ground that he is believed to have committed a felony in this State.

§ 2. If an arrest is made in this State by an officer of another State in accordance with the provisions of Section 1 of this act he shall without unnecessary delay 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 he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the Governor of this State, or admit him to bail for such purposes. If the magistrate determines that the arrest was unlawful he shall discharge the person arrested.

§ 3. Section 1 of this act shall not be construed so as to make any arrest in this State which would otherwise be lawful.

§ 4. For the purpose of this act the word "State" shall include the District of Columbia.

§ 5. The term "fresh pursuit" as used in this act shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonable[y] sus-

pected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

§ 6. Upon the passage and approval by the Governor of this act it shall be the duty of the Secretary of State to certify a copy of this act to the executive department of each of the States of the United States.

§ 7. If any part of this act is for any reason declared void, it is declared to be the intent of this act that such invalidity shall not affect the validity of the remaining portions of this act.

§ 8. This act may be cited as the Uniform Act on Fresh Pursuit.

Approved March 13, 1939.

CHAPTER 134

H. B. No. 259—(Gray)

RELATING TO THE ENFORCEMENT OF PENALTY

An act amending Section 7316 of the Compiled Laws of 1913, relating to the enforcement of penalty, forfeiture and punishment of violators of a statute that has been repealed: and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Section 7316 of the Compiled Laws of 1913 is hereby amended and re-enacted to read as follows:

The repeal of any statute by the Legislative Assembly or by the people by an initiated law, shall not have the effect to release or extinguish any penalty, fine, liability, or forfeiture incurred under such statute, but as to cases tried before, or subsequent to, the repeal of such statute, it shall have the effect of extinguishing any jail or prison sentence, that may be, or has been, imposed by reason of said law, unless the repealing act shall expressly provide that the penalties of imprisonment shall remain in force as to crimes committed in violation of such law prior to its repeal. In other respects, such act shall remain in force only for the purpose of the enforcement of such fine, penalty, or forfeiture.

§ 2. EMERGENCY.] This act is hereby declared an emergency

measure, and shall take effect and be in force from and after its passage and approval.

Approved March 18, 1939.

CHAPTER 135

H. B. No. 243—(Bergesen)

UNLAWFUL ENTRY

An act to amend and re-enact Section 9878 of the Compiled Laws of the State of North Dakota for the year 1913 relating to unlawful entry.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Section 9878 of the Compiled Laws of the State of North Dakota for the year 1913 is hereby amended and re-enacted to read as follows:

§ 9878. UNLAWFULLY ENTERING BUILDING.] Every person who, under circumstances not amounting to any burglary, enters any building or part of any building, booth, tent, warehouse, raiload car, motor vehicle or trailer, vessel or other structure or erection with intent to commit any felony, larceny or malicious mischief, is guilty of a misdemeanor.

Approved March 1, 1939.

DANCES

CHAPTER 136

H. B. No. 106—(Gray & Bergesen)

DEFINING A PUBLIC DANCING PLACE

An act to amend and re-enact Section 1 of Chapter 128 of the Session Laws of the State of North Dakota for the year 1925, being Section 3163a1 of the Supplement to the 1913 Compiled Laws of the State of North Dakota, defining a public dancing place.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Section 1 of Chapter 128 of the Session Laws of the State of North Dakota for the year 1925, being Section 3163a1 of the 1925 Supplement to the 1913 Compiled Laws