

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 256

H. B. No. 674
(Kelsch, Bullis, Kuehn)

MULTIPLE COUNT INDICTMENTS, CHARGES, AND MOTIONS

AN ACT

To create and enact sections 29-01-06.1 and 29-11-10.1 of the North Dakota Century Code, relating to the trial of a defendant under a multiple count indictment or information, and to amend and reenact section 29-11-10, and subsections 1 and 2 of section 29-14-04 of the North Dakota Century Code, relating to charges of offenses and grounds for motion to quash.

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

§ 1.) Section 29-01-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

29-01-06.1. Rights of Defendant—Exception.) When the defendant is charged with a crime under a multiple count indictment or information as allowed by section 29-11-10.1, he may be tried on all counts in any one of the counties in which one of the offenses was committed.

§2. Amendment.) Section 29-11-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-11-10. Charging the Offense.) The indictment or information may charge, and is valid and sufficient if it charges, the offense or offenses for which the defendant is being prosecuted in one or more of the following ways:

1. By using the name given to the offense or offenses by a statute or statutes and sufficient particulars to give the court and the defendant notice of the offense or offenses intended to be charged;
2. By stating so much of the definition of the offense or offenses in terms of the statute or statutes defining the offense or offenses, or in terms of substantially the same meaning, as is sufficient to give the court and the defendant notice of the offense or offenses which are intended to be charged.

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

§ 3.) Section 29-11-10.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

29-11-10.1. Charging Crime in Separate Counts and Consolidating Indictments and Information.) When there are several charges for the same act or transaction, constituting different crimes or the same crime alleged to have been committed in a different manner or by different means, or for two or more acts or transactions connected together or constituting parts of a common scheme or plan, or for two or more acts or transactions constituting crimes of the same or a similar character, instead of having several indictments or informations, the whole may be joined in one indictment or information in separate counts, and if two or more indictments or informations are found in such cases, the court may order them to be consolidated; provided, however, that where the charges involve two or more acts or transactions constituting crimes of the same or a similar character which are neither connected together nor parts of a common scheme or plan, the court, in the interest of justice and for good cause shown, may, in its discretion, order that the different charges set forth in the indictment or information or indictments or informations, be tried separately. The joinder or consolidation of indictments or informations shall not be prevented by the fact that different penalties may be imposed for conviction upon the several crimes charged.

§ 4. **Amendment.)** Subsections 1 and 2 of section 29-14-04 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. In either an indictment or information:
 - a. The facts stated therein do not constitute a public offense;
 - b. The court has no jurisdiction of the offense or offenses charged therein;
 - c. It does not conform substantially to the requirements of this title;
 - d. It contains a statement of matter which if true would constitute a legal justification of or excuse for the offense or offenses charged, or other legal bar to the prosecution;

- e. The court has ordered a bill of particulars under the provisions of section 29-11-11 and the state's attorney has failed to furnish a sufficient bill;
 - f. It appears from the bill of particulars furnished under the provisions of section 29-11-11 that the particulars stated do not constitute the offense or offenses charged in the indictment or information, or that the defendant did not commit that offense or those offenses, or that a prosecution for that offense or those offenses is barred by the statute of limitations. If the state's attorney furnishes another bill of particulars which states the particulars so that it appears that they constitute the offense or offenses charged and that the offense or offenses were committed by the defendant and that it is not barred by the statute of limitations, the motion shall be overruled;
 - g. The defendant has been pardoned of the offense or offenses charged;
2. In an indictment:
- a. It is not found, endorsed, presented, nor filed as prescribed by this title;
 - b. The names of the witnesses examined before the grand jury are not inserted at the foot of the indictment nor otherwise exhibited thereon;
 - c. There was ground for a challenge to the panel or to an individual grand juror and the defendant had not been held to answer at the time the grand jurors were sworn;
 - d. A person other than a grand juror was present while the grand jurors were deliberating or voting, otherwise than as provided in section 29-10-26;
 - e. The requisite number of grand jurors did not concur in finding the indictment;
 - f. The grand jurors had no authority to inquire into the offense or offenses charged;
 - g. If the defendant had not been held to answer before the finding of the indictment, any ground which would have been good ground for challenge either to the panel or to any individual grand juror;

Approved February 28, 1967.

CHAPTER 257

S. B. No. 131
(Chesrown, Longmire)

RESISTING ARREST

AN ACT

To create and enact section 29-06-13.1 of the North Dakota Century Code, relating to resistance to a peace officer in the performance of his duty.

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

§ 1.) Section 29-06-13.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

29-06-13.1. Resisting Peace Officer.) Any person who shall knowingly resist, obstruct or abuse a sheriff or peace officer in the execution of his office, or who shall knowingly resist an arrest by such official shall be guilty of a misdemeanor.

Approved March 1, 1967.

CHAPTER 258

H. B. No. 748
(Kelsch)

ARRESTS WITHOUT WARRANT

AN ACT

To amend and reenact section 29-06-15 of the North Dakota Century Code, relating to arrests without a warrant.

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

§ 1. **Amendment.)** Section 29-06-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-06-15. Arrest Without Warrant.) A peace officer, without a warrant, may arrest a person:

1. For a public offense, committed or attempted in his presence; and for the purpose of this subsection a crime shall be deemed committed or attempted in his presence when what the officer observes through his

senses reasonably indicates to him that a crime was in fact committed or attempted in his presence by the person arrested.

2. When the person arrested has committed a felony, although not in his presence.
3. When a felony in fact has been committed, and he has reasonable cause to believe the person arrested to have committed it.
4. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.
5. For such public offenses, not classified as felonies and not committed in his presence as provided for under section 29-06-15.1.

Approved February 24, 1967.

CHAPTER 259

S. B. No. 233
(Longmire)

MAGISTRATE'S DUTY AS TO DEFENDANTS

AN ACT

To amend and reenact section 29-07-01 of the North Dakota Century Code, relating to magistrate's duty and instructing defendant as to rights, provide for appointment of counsel for indigents and making provision for payment of such expenses, and to repeal sections 29-01-27 and 27-08-31 of the North Dakota Century Code.

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

§ 1. **Amendment.)** Section 29-07-01 of the North Dakota Century Code is amended and reenacted to read as follows:

29-07-01. Magistrate's Duty—Testimony May Be Taken.) When the defendant is brought before a magistrate upon an arrest, either with or without a warrant, on a charge of having committed a public offense which the magistrate is without authority to try and determine, the magistrate immediately shall inform him:

1. Of the charge against him;
2. Of his right to remain silent;
3. Of his right to the aid of counsel before answering any questions and until such times as he is released or finally convicted;

4. Of his right to have his legal services provided for at public expense to the extent he is unable to pay for his own defense without undue hardship; and
5. Of his right to a preliminary examination and his right to waive same.

§ 2.) Section 29-07-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

29-07-01.1. Appointment of Counsel for Indigents—Payment of Expenses.) The magistrate before whom a defendant charged with the violation of state criminal law is brought may appoint counsel from a list prepared under the direction of the senior district judge in his district and in the manner prescribed by him. The determination of the degree of need of the defendant shall be deferred until his first appearance before the trial judge, and the court may require the defendant to answer all inquiries under oath concerning his need for appointment of counsel. Thereafter, the court concerned shall determine, with respect to each proceeding, whether the defendant is a needy person. The appropriate judge may appoint counsel for a needy person at any time or for any proceeding arising out of a criminal case if reasonable.

Lawyers appointed to represent needy persons shall be compensated at a reasonable rate to be determined by the court. Expenses necessary for the adequate defense of a needy person, when approved by the judge, shall be paid by the county wherein the alleged offense took place. A defendant with appointed counsel shall pay to the county such sums as the court shall direct. The state's attorney shall seek recovery of any such sums any time he determines the person for whom counsel was appointed may have funds to repay the county within six years of the date such amount was paid on his behalf.

§ 3. **Repeal.)** Sections 29-01-27 and 27-08-31 of the North Dakota Century Code are hereby repealed.

Approved March 14, 1967.

CHAPTER 260

S. B. No. 124

(Nething, Hofstrand, Morgan)

EXECUTION OF WARRANT—USE OF FORCE

AN ACT

To amend and reenact section 29-29-08 of the North Dakota Century Code, relating to the use of force in the execution of a search warrant.

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

§ 1. Amendment.) Section 29-29-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-29-08. Execution of Warrant—Use of Force.) An officer directed to serve a search warrant may break open an outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant, (a) if, after notice of his authority and purpose he be refused admittance, or (b) without notice of his authority and purpose if a district judge issuing the warrant has inserted a direction therein that the officer executing it shall not be required to give such notice. The district judge may so direct only upon written petition and proof under oath, to his satisfaction, that the property sought may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, if such notice were to be given.

Approved March 1, 1967.