JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 300

S. B. No. 283
(Chesrown, Freed)

BAIL IN TRAFFIC VIOLATION CASES

AN ACT

To amend and reenact sections 29-08-02 and 29-08-21 of the North Dakota Century Code, relating to bail and the authorization of persons to arrange, receive, and approve bail in traffic cases, and relating to forfeiture of bail and the disposition of cases involving traffic law violations.

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

Section 1. Amendment.) Section 29-08-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-08-02. "Admission to Bail" Defined—Delegation of Authority by Magistrate.) Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon an undertaking with sufficient sureties for his appearance. Any magistrate or municipal judge in this state may in his discretion designate, authorize, and appoint an additional person or persons to arrange, receive, and approve bail in cases involving traffic violations.

Section 2. Amendment.) Section 29-08-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-08-21. Forfeiture of Bail—Excuse—Disposition of Traffic Violation Cases.) If, without sufficient excuse, any person who has given an undertaking in a criminal action or proceeding neglects to appear according to the terms or conditions of the same, either as a witness or for hearing, arraignment, trial,

or judgment, or upon any other occasion when his presence in court or before the magistrate may be lawfully required, or to surrender himself in execution of the judgment, the court must direct that the fact be entered upon its minutes and that the bail furnished, whether by money deposited or an undertaking of bail, as the case may be, shall be declared forfeited, but if, at any time before the final adjournment of the court, such person or his surety for bail shall appear and satisfactorily excuse his neglect, the court may direct the forfeiture to be vacated upon such terms as may be just. After the forfeiture, the prosecuting attorney must proceed by action against the obligors for bail jointly or severally upon the undertaking furnished. If money deposited for bail is forfeited, the clerk of the court or other officer with whom it is deposited, immediately after the final adjournment, or at such time as the court may direct, must pay over the money deposited to the county treasurer, or to the treasurer of the city in actions to enforce municipal ordinances; and the court, at the time bail is ordered forfeited in cases charging violation of vehicular traffic laws or ordinances, may in his judicial discretion order that no further proceedings be had in the case.

Approved March 17, 1969.

CHAPTER 301

H. B. No. 277
(Welder, Kelsch, Aamoth, Schaffer)

NOTICE OF DEFENSE OF ALIBI

AN ACT

To provide that a defendant in a criminal case must give notice of the defense of alibi.

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

Section 1. Defendant in Criminal Case to Give Notice of Alibi.) Whenever a defendant in a criminal case in a court of record in this state intends to rely upon an alibi as a defense, he shall give to the prosecuting state's attorney, not later than five days prior to the trial of such cause, a notice in writing setting forth with particularity the place or places where he claims to have been when the crime was committed, together with the names and addresses of the witnesses to his alibi, if known to the defendant. Names of additional witnesses may be filed with the court and served on the prosecuting state's attorney subsequent to the time of delivery of such notice only upon such conditions as the court may determine. In default of the notice required by this section, evidence of the alibi shall not be received by the court, unless otherwise ordered for good cause shown.

Approved March 14, 1969.

CHAPTER 302

H. B. No. 399
(J. Peterson)

TEMPORARY QUESTIONING OF PERSONS IN PUBLIC PLACES AND SEARCH FOR WEAPONS

AN ACT

To provide for temporary questioning of persons in public places, and allowing a search for weapons.

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

Section 1. Temporary Questioning of Persons in Public Places—Search for Weapons.) A peace officer may stop any person abroad in a public place whom he reasonably suspects is committing, has committed, or is about to commit:

1. Any felony.

2. A misdemeanor relating to the possession of a concealed or dangerous weapon or weapons.

3. Burglary or unlawful entry.

4. A violation of any provision relating to possession of narcotic drugs.

The peace officer may demand of such person his name, address, and an explanation of his actions. When a peace officer has stopped a person for questioning pursuant to this section and reasonably suspects that he is in danger of life or limb, he may search such person for a dangerous weapon. If the peace officer finds such a weapon or any other thing, the possession of which may constitute a crime, he may take and keep it until the completion of the questioning, at which time he shall either return it, if lawfully possessed, or arrest such person.

Approved March 25, 1969.

CHAPTER 303

H. B. No. 266
(Atkinson, Bullis)

ADMINISTRATIVE INSPECTION WARRANTS

AN ACT

To provide for the issuance of warrants to conduct administrative and other inspections authorized by law.

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

Section 1. Warrants to Conduct Inspections Authorized by Law.)

1. Notwithstanding the provisions of chapter 29-29 of the North Dakota Century Code, any official or employee of the state or of a unit of county or local government of North Dakota may, under the conditions specified herein, obtain a warrant authorizing to conduct a search or inspection of property if such a search or inspection is one that is elsewhere authorized by law, either with or without the consent of the person whose privacy would be thereby invaded, and is one for which such a warrant is constitutionally required.

2. The warrant may be issued by any magistrate whose territorial jurisdiction encompasses the property to be inspected.

3. The issuing magistrate shall issue the warrant when he is satisfied the following conditions are met:

   a. The one seeking the warrant must establish under oath or affirmation that the property 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 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;

   b. An affidavit indicating the basis for the establishment

of one of the grounds described in "a" above must be signed under oath or affirmation by the affiant;

c. The issuing magistrate must examine the affiant under oath or affirmation to verify the accuracy of the matters indicated by the statement in the affidavit.

4. The warrant shall be validly issued only if it meets the following requirements:

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

b. It must describe, either directly or by reference to the affidavit, the property where the search or inspection is to occur and be accurate enough in description so that the executor of the warrant and the owner or the possessor of the property can reasonably determine from it what person or property the warrant authorizes an inspection of;

c. It must indicate the conditions, objects, activities or circumstances which the inspection is intended to check or reveal;

d. It must be attached to the affidavit required to be made in order to obtain the warrant.

5. Any warrant issued under this section for a search or inspection shall be valid for only twenty-four hours 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.

6. No facts discovered or evidence obtained in a search or inspection conducted under authority of a warrant issued under this section shall be competent as evidence in any civil, criminal or administrative action, nor considered in imposing any civil, criminal, or administrative sanc-

tion against any person, nor as a basis for further seeking to obtain any warrant, if the warrant is invalid or if what is discovered or obtained is not a condition, object, activity or circumstance which it was the legal purpose of the search or inspection to discover; but this shall not prevent any such facts or evidence to be so used when the warrant issued is not constitutionally required in those circumstances.

7. The warrants authorized under this section shall not be regarded as search warrants for the purpose of application of chapter 29-29 of the North Dakota Century Code.

Approved March 18, 1969.

CHAPTER 304

S. B. No. 116
(Chesrown, Freed, Holand)

UNIFORM POST-CONVICTION PROCEDURE

AN ACT

To provide an exclusive remedy to a person convicted of or sentenced for a crime and prescribing the procedure subsequent to conviction for challenging the validity of the conviction or sentence.

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

Section 1. Remedy—To Whom Available—Conditions.)

1. Any person who has been convicted of, or sentenced for, a crime and who claims:

   a. That the conviction or the sentence was in violation of the Constitution, laws, or treaties of the United States or the Constitution or laws of this state;

   b. That the court was without jurisdiction to impose sentence;

   c. That the sentence exceeds the maximum authorized by law;

   d. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

   e. That his sentence has expired, that his probation, parole, or conditional release has been unlawfully revoked, or that he is otherwise unlawfully held in custody or other restraint; or

   f. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy;

may institute, without paying a filing fee, a proceeding under this Act to secure relief.

2. This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this Act it comprehends and takes the place of all other common law, statutory, or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

Section 2. Exercise of Original Jurisdiction in Habeas Corpus.) The district court in which, by the Constitution of this state, original jurisdiction in habeas corpus is vested, may entertain in accordance with its rules a proceeding under this Act in the excercise of its original jurisdiction. In that event, this Act, to the extent applicable, governs the proceeding.

Section 3. Commencement of Proceedings—Verification—Filing—Service.) A proceeding is commenced by filing an application verified by the applicant with the clerk of the court in which the conviction took place. An application may be filed at any time. Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct. The supreme court may prescribe the form of the application and verification. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the state's attorney of the county in which the criminal action was venued.

Section 4. Application—Contents.) The application shall identify the proceedings in which the applicant was convicted, give the date of the entry of the judgment and sentence complained of, specifically set forth the grounds upon which the application is based, and clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set forth separately from other allegations of facts and shall be verified as provided in section 3 of this Act. Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or sentence. Argument, citations, and discussion of authorities are unnecessary.

Section 5. Inability to Pay Costs.) If the applicant is unable to pay court costs and expenses of representation, including stenographic, printing, and legal services, these costs and expenses, except in cases of misdemeanors exempted under the federal supreme court decisions and violations of municipal ordinances, shall be made available to the applicant in the preparation of the application, in the trial court, and on review. Costs and expenses made available to the applicant shall, upon approval by the judge, be paid by the county in which the criminal action was venued.

Section 6. Pleadings and Judgment on Pleadings.)

1. Within thirty days after the docketing of the application, or within any further time the court may fix, the state shall respond by answer or by motion which may be supported by affidavits. At any time prior to entry of judgment the court may grant leave to withdraw the application. The court may make appropriate orders for amendment of the application or any pleading or motion for pleading over, for filing further pleadings or motions, or for extending the time of the filing of any pleading. In considering the application the court shall take account of substance regardless of defects of form. If the application is not accompanied by the record of the proceedings challenged therein, the respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.

2. When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if there exists a material issue of fact.

3. The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions, answers to interrogatories,

and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Section 7. Hearing—Evidence—Order.) The application shall be heard in, and before any judge or his successor of, the court in which the conviction took place. A record of the proceedings shall be made and preserved. All rules and statutes applicable in civil proceedings including pre-trial and discovery procedures are available to the parties. The court may receive proof by affidavits, depositions, oral testimony, or other evidence and may order the applicant brought before it for the hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment.

Section 8. Waiver of or Failure to Assert Claims.) All grounds for relief available to an applicant under this Act must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Section 9. Review.) A final judgment entered under this Act may be reviewed by the supreme court of this state on appeal brought either by the applicant within six months or by the state within thirty days from the entry of the judgment.

Section 10. Short Title.) This Act may be cited as the Uniform Post-Conviction Procedure Act.

Approved March 26, 1969.