

## **CHAPTER 29-28 APPEALS**

### **29-28-01. Review proceedings by appeal - Writ of error abolished.**

Superseded by N.D.R.App.P., Rule 1.

### **29-28-02. Who may appeal.**

Either the defendant or the state may take an appeal as provided in this chapter.

### **29-28-03. Appeals are matter of right.**

An appeal to the supreme court provided for in this chapter may be taken as a matter of right.

### **29-28-04. Designation of parties on appeal.**

Superseded by N.D.R.Crim.P., Rule 37.

### **29-28-05. Appeal by one of several defendants.**

Superseded by N.D.R.App.P., Rule 3.

### **29-28-06. From what defendant may appeal.**

An appeal may be taken by the defendant from:

1. A verdict of guilty;
2. A final judgment of conviction;
3. An order refusing a motion in arrest of judgment;
4. An order denying a motion for a new trial; or
5. An order made after judgment affecting any substantial right of the party.

### **29-28-07. From what the state may appeal.**

An appeal may be taken by the state from:

1. An order quashing an information or indictment or any count thereof.
2. An order granting a new trial.
3. An order arresting judgment.
4. An order made after judgment affecting any substantial right of the state.
5. An order granting the return of property or suppressing evidence, or suppressing a confession or admission, when accompanied by a statement of the prosecuting attorney asserting that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding. The statement must be filed with the notice of appeal.

### **29-28-08. Time for appeals in criminal cases.**

Superseded by N.D.R.Crim.P., Rule 37.

### **29-28-09. Manner of taking appeal - Notice.**

Superseded by N.D.R.Crim.P., Rules 37, 38.

### **29-28-10. Personal service impossible - Publication.**

Superseded by N.D.R.Crim.P., Rule 49.

### **29-28-11. When appeal deemed taken.**

Superseded by N.D.R.Crim.P., Rule 37.

### **29-28-12. Appeal by state - Effect.**

An appeal taken by the state in no case stays or affects the operation of the judgment in favor of the defendant until the judgment is reversed.

**29-28-13. What judgments superseded by appeal - Certificate of probable cause.**

Superseded by N.D.R.Crim.P., Rule 38.

**29-28-14. Certificate of probable cause issued - Duty of sheriff.**

Superseded by N.D.R.Crim.P., Rule 38.

**29-28-15. Execution suspended during pendency of appeal.**

Superseded by N.D.R.Crim.P., Rule 38.

**29-28-16. Stay on appeal - Custody of defendant.**

Superseded by N.D.R.Crim.P., Rules 38, 46.

**29-28-17. Certificate of appeal taken and bail put in - Duty of sheriff.**

Superseded by N.D.R.Crim.P., Rules 38, 46.

**29-28-18. Transmission of papers to supreme court.**

Superseded by N.D.R.App.P., Rule 11.

**29-28-19. Printing of transcripts or briefs not required.**

Superseded by N.D.R.App.P., Rule 32.

**29-28-20. Irregularity in substantial particulars - Notice.**

Superseded by N.D.R.App.P., Rules 3, 27.

**29-28-21. An appeal must not be dismissed for informality.**

Superseded by N.D.R.App.P., Rule 3.

**29-28-22. Appeal stands for argument at first term.**

Superseded by N.D.R.App.P., Rule 45.

**29-28-23. When verdict or judgment must be affirmed - Reversal.**

Superseded by N.D.R.App.P., Rule 34.

**29-28-24. Number of counsel heard.**

Superseded by N.D.R.App.P., Rule 34.

**29-28-25. Defendant need not appear in supreme court.**

Superseded by N.D.R.App.P., Rule 34.

**29-28-26. Technical errors to be disregarded on appeal.**

Superseded by N.D.R.Crim.P., Rule 52.

**29-28-27. Court may review intermediate orders.**

Superseded by N.D.R.App.P., Rule 35.

**29-28-28. Power of supreme court on appeal.**

Superseded by N.D.R.App.P., Rule 35.

**29-28-29. New trial ordered - Where had.**

Superseded by N.D.R.App.P., Rule 35.

**29-28-30. Judgment reversed without new trial - Defendant discharged - Disposal of bail.**

If a judgment against the defendant is reversed without ordering a new trial, the supreme court, if the defendant is in custody, shall direct that the defendant be discharged therefrom, or if on bail, that the defendant's bail be exonerated, or if money was deposited instead of bail, that it be refunded to the defendant.

**29-28-30.1. Verdict affirmed - Must be enforced.**

If a verdict against the defendant is affirmed, the original verdict must stand and any court orders thereon, including suspension and deferred imposition of sentence, must be enforced.

**29-28-31. Judgment affirmed must be enforced.**

If a judgment against the defendant is affirmed, the original judgment must be enforced.

**29-28-32. Judgment of court entered - Certificate.**

Superseded by N.D.R.App.P., Rule 36.

**29-28-33. Certificate remitted - District court only has jurisdiction.**

After the certificate of the judgment has been remitted to the court below, the appellate court has no further jurisdiction of the appeal or of the proceedings therein, and all orders necessary to carry the judgment into effect must be made by the district court to which the certificate is remitted.

**29-28-34. Imprisonment, reversal, reimprisonment - Deduction of time already served.**

Repealed by S.L. 1975, ch. 106, § 673.

**29-28-35. Appeal by state - Power of supreme court.**

If the appeal is taken by the state, the supreme court cannot reverse the judgment or modify it so as to increase the punishment, but may affirm it, and shall point out any errors in the proceedings or in the measure of punishment, and its opinion is obligatory on the district court as the correct exposition of the law.