

# JUDICIAL PROCEDURE, CRIMINAL

## CHAPTER 345

SENATE BILL NO. 2225  
(Vosper, Olin, Erickson)

### WARRANTLESS ARREST AUTHORITY

AN ACT to amend and reenact section 29-06-15 of the North Dakota Century Code, relating to the power of a peace officer or officer in the United States customs service or the immigration and naturalization service, without a warrant, to arrest a person.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 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 - PEACE OFFICER - OFFICER IN THE UNITED STATES CUSTOMS SERVICE OR THE IMMIGRATION AND NATURALIZATION SERVICE.

1. A peace officer, without a warrant, may arrest a person:
  - 1- a. For a public offense, committed or attempted in ~~his~~ the officer's presence; and for the purpose of this subsection a crime shall be deemed committed or attempted in ~~his~~ the officer's presence when what the officer observes through ~~his~~ the officer's senses reasonably indicates to ~~him~~ the officer that a crime was in fact committed or attempted in ~~his~~ the officer's presence by the person arrested.
  - 2- b. When the person arrested has committed a felony, although not in ~~his~~ the officer's presence.
  - 3- c. When a felony in fact has been committed, and ~~he~~ the officer has reasonable cause to believe the person arrested to have committed it.
  - 4- d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.

- 5- e. For ~~such~~ the public offenses, not classified as felonies and not committed in ~~his~~ the officer's presence as provided for under section 29-06-15.1.
- 6- f. On a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages.
2. An officer of the United States customs service or the immigration and naturalization service, without a warrant, may arrest a person if all of the following circumstances exist:
- a. The officer is on duty.
- b. One or more of the following situations exist:
- (1) The person commits an assault or other crime, defined and punishable under chapter 12.1-17, against the officer or against any other person in the presence of the officer.
- (2) The officer has reasonable cause to believe that a crime, as defined in paragraph 1 of subdivision b of this subsection, has been committed and reasonable cause to believe that the person to be arrested has committed it.
- (3) The officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person to be arrested has committed it.
- (4) The officer has received positive information from an authoritative source that a peace officer holds a warrant for the person's arrest.
- c. The officer has received training in the laws of this state equivalent to the training provided for a police officer under chapter 12-61.

Approved March 11, 1981

## CHAPTER 346

SENATE BILL NO. 2313  
(Stenehjem)

## CHANGE OF JUDGE

AN ACT to amend and reenact sections 27-07-23, 27-08-27, 27-08-38, subsections 4, 6, 7, 8, and 9 of section 29-15-21, and sections 33-03-05 and 33-03-11 of the North Dakota Century Code, relating to assignment of judges and change of venue.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. If House Bill No. 1060 is not approved by the forty-seventh legislative assembly, then section 27-07-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07-23. CHANGE OF JUDGE - WHEN PERMITTED - HOW OBTAINED - AUTHORITY AND DUTIES OF OTHER JUDGE. If the judge of the county court of any county is disqualified, is necessarily absent from this state, or is ill and unable to act, he the judge shall request in writing--the county judge of an adjoining county to act in his place and--stead, provided, however, that should the--county--judge--become incapacitated--or--incompetent because of illness to the extent that he is unable to make a request in writing,--then the--district court having--jurisdiction--of--said--county--shall in writing request the county judge of an adjoining county to act in the place and--stead of the--incapacitated--county--judge that the presiding judge of the judicial district in which the county is situated assign another judge in the district to act in the county judge's place. If another judge in the judicial district is unavailable for assignment, the presiding judge shall request the chief justice to assign a judge to fill the temporary vacancy. When acting pursuant to such--request the assignment, the county judge of such adjoining county assigned judge shall possess all the powers and shall have all the jurisdiction of the county judge for whom he the assigned judge acts,--and the judge so requested shall attend for the--purpose of acting for such judge at such time as may be necessary.

SECTION 2. If House Bill No. 1060 is not approved by the forty-seventh legislative assembly, then section 27-08-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

\* NOTE: Chapter 27-07 was repealed by section 51 of House Bill No. 1060, chapter 319.

27-08-27. CHANGE OF JUDGE FOR TRIAL OF CIVIL ACTION IN COUNTY COURT HAVING OF INCREASED JURISDICTION. If a party to a civil action in a county court having of increased jurisdiction, after issue is joined therein and before the opening of a term of such court at which the cause is to be tried the trial, shall file his affidavit, corroborated by the affidavit of his attorney and that of at least one other reputable person, stating that there is good reason to believe that such the party cannot have a fair and impartial trial of said the action by reason of the prejudice, bias, or interest of the judge of such court, such, the judge shall proceed no further in such the action, but, forthwith, shall certify all proceedings therein to the district court of the county for trial or shall request, arrange for, and procure the county judge of some other county court having increased jurisdiction to preside at the trial thereof in the county in which the action is pending immediately forward the request for a change of judge to the presiding judge of the judicial district in which the county is situated. The presiding judge of the judicial district shall assign another judge in the district to act in the place of the disqualified judge. If another judge of a county court of increased jurisdiction in the judicial district is not available for assignment, then the presiding judge shall request the chief justice to assign a judge to act in the place of the disqualified judge. The actual expenses of such the assigned judge while in attendance upon the trial of the cause for which the change was had and the extra expense of the court and jury incurred by reason of such change shall be paid in advance by the person asking for the change, or such person shall give a bond for the payment thereof. If a bond is given, the same shall be approved by the clerk of such court and the amount thereof shall be fixed by the presiding judge by the county in which the case originated. Not more than one such change shall be granted on the application of either party, and a failure to file such an affidavit of prejudice within the time specified shall constitute a waiver of all objections to the trial of such the action by the presiding judge of such county court.

SECTION 3. AMENDMENT. If House Bill No. 1060 is not approved by the forty-seventh legislative assembly, then section 27-08-38 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08-38. CHANGE OF JUDGE FOR TRIAL OF CRIMINAL ACTION IN COUNTY COURT HAVING OF INCREASED JURISDICTION. If the state or a defendant in a criminal action in a county court having of increased jurisdiction, before the opening of a term of such court at which such action is to be tried, or if a trial thereof has been had without a verdict, at the term at which said trial was had and before another trial of the action is begun, shall file with the clerk of the court in which the action or proceeding is pending a written demand for change of judge, such judge shall proceed no further in such action, but, forthwith, shall certify all proceedings in such action to the district court of the county for trial or shall request, arrange for, and procure the county judge of some other county court having increased jurisdiction to preside at

~~the trial thereof in the county in which the action is pending shall immediately forward the request for a change of judge to the presiding judge of the judicial district in which the county is situated. The presiding judge shall then assign another judge in the district to act in the place of the disqualified judge. If another judge of a county court of increased jurisdiction in the judicial district is not available for assignment, then the presiding judge shall request the chief justice to assign a judge to act in the place of the disqualified judge. The actual expenses of such judge while traveling to and from the county to which he has been called and during the trial of such action shall be paid by the county in which the action is pending originated. Not more than one such change each shall be granted to the state or the defendant. The procedures set out in subsections 1 through 3 of section 29-15-21 with regard to change of judge in district court shall apply to this section.~~

SECTION 4. AMENDMENT. Subsections 4, 6, 7, 8, and 9 of section 29-15-21 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. Upon the filing of the demand for change of judge, the clerk shall ~~forthwith notify the judge sought to be disqualified by delivering to him a copy of the demand, and promptly forwarding another copy of the demand to the clerk of the supreme court~~ immediately send a copy of the demand for a change of judge to the presiding judge of the judicial district and the judge sought to be disqualified.
6. If a demand for a change of judge has been made and another judge assigned by the ~~supreme court~~, presiding judge of the judicial district, the ~~supreme court~~ presiding judge may decline to grant another demand for a change of judge made by a party whose interests in the matter are not adverse to those of the party whose demand was granted. A judge assigned by the ~~supreme court~~ presiding judge pursuant to a demand for change of judge is not disqualified upon a subsequent demand for change of judge unless and until the subsequent demand is granted and notice thereof is given to him by the ~~supreme court~~ presiding judge. A subsequent demand for a change of judge may be made only within five days after receiving notice of the assignment of a judge by the ~~supreme court~~ presiding judge pursuant to a previous demand.
7. Upon receipt of a timely filed demand for a change of judge from the clerk of the district court of any county in this state, the ~~supreme court~~ presiding judge of the judicial district shall designate a district judge to act in the place and stead of the judge disqualified.
8. The judge designated, as soon as possible after receiving such notice from the ~~supreme court~~ presiding judge of the judicial district and during the same term unless

agreement to the contrary is made by the parties, shall proceed with the hearing or trial, first giving to the parties or their attorneys reasonable notice of the date of the hearing or trial.

9. Whenever a demand for a change of judge is filed in a criminal action, in accordance with the provisions of this section, and the party also asks for a change of place of trial upon any ground specified in rule 21 of the North Dakota Rules of Criminal Procedure, the ~~court~~ judge against whom the demand for change is filed shall proceed no further in the action and thereupon shall be disqualified to do any further act in said cause. In such case, the application for a change of place of trial shall be heard and determined by the judge designated by the ~~supreme-court~~ presiding judge to act in said action.

SECTION 5. AMENDMENT. If House Bill No. 1060 is not approved by the forty-seventh legislative assembly, then section 33-03-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

33-03-05. COUNTY JUSTICE MAY CALL IN OTHER COUNTY JUSTICE TO PRESIDE. In case of the sickness, disqualification, disability, or necessary absence of a county justice, on-a-return-of-a-summons-or at-the-time-appointed-for-a-trial-before-him, another-county-justice as-the-parties-may-agree-upon-and, if-they-do-not-so-agree, then-the next-nearest-county-justice, may-attend-in-his-behalf the presiding judge of the judicial district in which the county is situated shall assign another judge in the district to act in his place. If another judge in the judicial district is unavailable for assignment, the presiding judge shall request the chief justice to assign a judge to fill the vacancy. Such-other-county-justice The judge designated to fill the vacancy shall be vested, for-the-time being, with the powers of the county justice before-whom-the-summons was-returnable for whom the judge acts. In-that-case, the The proper entry of the proceedings before the attending-county-justice, subscribed-by-him, assigned judge must be made in the docket of the county justice before-whom-the-summons-was-returnable for whom the assigned judge is acting. If-the-case-is-adjourned, the-county justice---before---whom---the---summons---was---returnable---may---resume jurisdiction.

SECTION 6. AMENDMENT. If House Bill No. 1060 is not approved by the forty-seventh legislative assembly, then section 33-03-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

33-03-11. CHANGE OF VENUE IN CIVIL AND CRIMINAL ACTIONS IN COUNTY JUSTICE COURT. A county justice court, at-any-time-before the-trial-of-a-civil-or-criminal-action, on-motion, may change the place of trial in any-of-the-following-cases a civil or criminal action pending therein:

1. ~~When, by affidavit of either party, it appears to the satisfaction of the county justice before whom the action is pending that such justice is a material witness for either party.~~
  2. ~~When either party makes and files an affidavit that he believes he cannot have a fair and impartial trial before such county justice by reason of the interest, prejudice, or bias of the justice.~~
  3. ~~When from any cause the county justice is disqualified from acting.~~
  4. ~~When the county justice is sick or unable to act.~~
1. If the county designated in the summons and complaint as the place of trial thereof is not the proper county;
  2. If there is reason to believe that an impartial trial of such action cannot be had in the county in which the action presently is pending; or
  3. If the convenience of the witnesses and the ends of justice would be promoted by such change.

Approved March 31, 1981