

# JUDICIAL PROCEDURE, CRIMINAL

## CHAPTER 358

HOUSE BILL NO. 1238  
(Dorso, Wold)

### VENUE OF MULTIPLE CREDIT CARD THEFT OFFENSES

AN ACT to create and enact a new section to chapter 29-03 of the North Dakota Century Code, relating to venue of multiple theft offenses involving credit cards.

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

SECTION 1. A new section to chapter 29-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

**Venue of multiple theft offenses involving credit cards.** If any of a series of thefts can be charged as one offense for purposes of grading under subsection 6 of section 12.1-23-05, if each of those thefts involved the use of a credit card, and if the total value of the property or services stolen is at least fifty dollars, venue for the criminal action, in which the series of thefts is charged as one offense, is in any county where any of the thefts was committed.

Approved March 14, 1985

## CHAPTER 359

HOUSE BILL NO. 1454  
(Representative Rydell)  
(Senator Olson)

## CHILD SEXUAL ABUSE PROSECUTIONS LIMITATIONS

AN ACT to create and enact a new section to chapter 29-04 of the North Dakota Century Code, relating to the limitation of time within which a prosecution for child sexual abuse must be commenced.

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

SECTION 1. A new section to chapter 29-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Prosecution for child sexual abuse within seven years. An information, indictment, or complaint for violation of sections 12.1-20-03 through 12.1-20-08, and 12.1-20-11, where the victim and the actor were in a familial relationship at the time the offense was committed, shall be found, made, or filed in the proper court within seven years after the commission of the offense.

"Familial relationship", for purposes of this section, means a situation in which the actor is any of the following:

1. The complainant's parent, stepparent, or guardian.
2. Nearer of kin to the complainant than first cousin, computed by rules of the civil law, whether of the half or the whole blood.
3. The brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great grandparent, great uncle, or great aunt of the complainant, by marriage or adoption.
4. An adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant's spouse.

Approved March 27, 1985

## CHAPTER 360

SENATE BILL NO. 2434  
(Stenehjem, Christensen)

## DOMESTIC VIOLENCE WARRANTLESS ARRESTS

AN ACT to amend and reenact subsection 1 of section 29-06-15 of the North Dakota Century Code, relating to arrest without a warrant in domestic violence cases.

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

SECTION 1. AMENDMENT. Subsection 1 of section 29-06-15 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A peace officer, without a warrant, may arrest a person:
  - a. For a public offense, committed or attempted in the officer's presence; and for the purpose of this subdivision a crime shall be deemed committed or attempted in the officer's presence when what the officer observes through the officer's senses reasonably indicates to the officer that a crime was in fact committed or attempted in the officer's presence by the person arrested.
  - b. When the person arrested has committed a felony, although not in the officer's presence.
  - c. When a felony in fact has been committed, and the officer has reasonable cause to believe the person arrested to have committed it.
  - d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.
  - e. For the public offenses, not classified as felonies and not committed in the officer's presence as provided for under section 29-06-15.1.
  - 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.
  - g. For domestic violence pursuant to section 14-07-1-06 If the peace officer has probable cause to believe the person within the preceding four hours, has assaulted his or her spouse, other family member, former spouse, or any person with whom the person resides, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this subdivision without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.

Approved March 30, 1985

## CHAPTER 361

SENATE BILL NO. 2117  
(Committee on Judiciary)  
(At the request of the Supreme Court)

## GRAND JURY EXPENSES PAID BY STATE

AN ACT to amend and reenact section 29-10.1-18 of the North Dakota Century Code, relating to expenses of grand juries.

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

SECTION 1. AMENDMENT. Section 29-10.1-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-10.1-18. Expenses. All necessary expenses of the grand jury incurred in its official capacity shall be paid by the ~~county out of the general fund~~ state out of funds appropriated to the supreme court.

Approved March 22, 1985

## CHAPTER 362

HOUSE BILL NO. 1564  
(Murphy)

## STATEWIDE GRAND JURY AUTHORITY

AN ACT to amend and reenact section 29-10.2-01 of the North Dakota Century Code, relating to expansion of the statewide grand jury jurisdiction to investigate civil fraud or deception.

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

SECTION 1. AMENDMENT. Section 29-10.2-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-10.2-01. Definition. As used in this chapter, "organized crime" means racketeering, as defined in section 12.1-06.1-01, or any combination or conspiracy of two or more persons to engage in criminal activity as a significant source of income or livelihood, or to violate, aid, or abet the violation of criminal laws relating to prostitution, gambling, loansharking, drug abuse, illegal alcohol or drug distribution, counterfeiting, extortion, or corruption of law enforcement officers or other public officers or employees.

Approved March 27, 1985

## CHAPTER 363

SENATE BILL NO. 2287  
(Olson)

## CRIMINAL APPEALS BY STATE

AN ACT to amend and reenact section 29-28-07 of the North Dakota Century Code, relating to the right of the state to appeal in criminal prosecutions.

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

SECTION 1. AMENDMENT. Section 29-28-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 deprivation of the use of the property ordered to be returned or suppressed or of a confession or admission ordered to be suppressed has rendered the proof available to the state with respect to the criminal charge filed with the court, (1) insufficient as a matter of law, or (2) so weak in its entirety that any possibility of prosecuting such charge to a conviction has been effectively destroyed 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 shall ~~must~~ be filed with the clerk of district court and a copy thereof shall must accompany the notice of appeal.

Approved March 30, 1985

## CHAPTER 364

SENATE BILL NO. 2179  
(Committee on Judiciary)  
(At the request of the Commission on Uniform State Laws)

### UNIFORM EXTRADITION AND RENDITION ACT

AN ACT to adopt the Uniform Extradition and Rendition Act (1980), relating to the interstate retrieval of fugitives; and to repeal chapters 29-30.1 and 29-30.2 of the North Dakota Century Code and section 29 of chapter 375 of the 1979 Session Laws, relating to the Uniform Rendition of Accused Persons Act and the Uniform Criminal Extradition Act.

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

SECTION 1. (1-101) Definitions. As used in this Act:

1. "Arrest warrant" means any document that authorizes a peace officer to take custody of a person.
2. "Certified copy" means a copy of a document accompanied by a statement of a custodian authorized by the law of a state to maintain the document that the copy is a complete and true copy of an official record filed and maintained in a public office.
3. "Demanded person" means a person whose return to a demanding state is sought from another state by extradition under sections 8 through 14.
4. "Demanding state" means a state that is seeking the return of a person from another state through the process of extradition under sections 8 through 14.
5. "Executive authority" means the chief executive in a state other than this state, any person performing the functions of chief executive, or a representative designated by the chief executive.
6. "Governor" means the governor of this state, any person performing the functions of governor or a representative designated by the governor.

7. "Issuing authority" means any person who may issue or authorize the issuance of an arrest warrant.
8. "Requested person" means a person whose return to a requesting state is sought from another state by rendition under sections 15 through 20.
9. "Requesting state" means a state that is seeking the return of a person from another state through the process of rendition under sections 15 through 20.

**SECTION 2. (1-102) Conditions of release.** The law of pretrial release of this state governs release of a person pursuant to sections 6, 13, 19, and 21.

**SECTION 3. (1-103) Nonwaiver by this state.** This Act and proceedings under it are not exclusive and do not affect the authority of this state to:

1. Try a demanded or requested person for a crime committed within this state;
2. Take custody of a demanded or requested person by extradition or rendition proceedings for the purpose of trial, sentence, or punishment for a crime committed within this state;
3. Take custody of a person under other provisions of law, including interstate agreements; or
4. Release a person from custody upon any valid conditions.

**SECTION 4. (2-101) Arrest without warrant.**

1. A peace officer may arrest a person without an arrest warrant upon probable cause to believe that the person is the subject of another state's arrest warrant issued for:
  - a. Commission of a crime punishable by death or imprisonment for a term exceeding one year;
  - b. Escape from confinement; or
  - c. Violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding.
2. The arrested person must be brought forthwith before a magistrate in the county where arrest is made.
3. The magistrate shall issue an order to continue custody or other process to assure the appearance of the person, if testimony or affidavit shows probable cause to believe the person is the subject of another state's arrest warrant issued for:

- a. The commission of a crime punishable by death or imprisonment for a term exceeding one year;
- b. Escape from confinement; or
- c. Violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding.

**SECTION 5. (2-102) Issuance of process or arrest warrant prior to receipt of demand or request.**

1. A magistrate in the county where arrest is sought shall authorize the issuance of an arrest warrant or other process to obtain the appearance of a person, if testimony or affidavit shows probable cause to believe:
  - a. The person is in this state; and
  - b. The person is the subject of another state's arrest warrant issued for:
    - (1) The commission of a crime punishable by death or imprisonment for a term exceeding one year;
    - (2) Escape from confinement; or
    - (3) Violation of any term of bail, probation, parole, or order arising out of a criminal proceeding.
2. Other process to obtain the appearance of a person must require the appearance before a magistrate.
3. The arrest warrant must require that the person be brought forthwith before a magistrate.

**SECTION 6. (2-103) Appearance prior to receipt of demand or request.**

1. The magistrate shall inform the person appearing pursuant to section 4 or 5, of:
  - a. The name of the other state that has subjected the person to an arrest warrant;
  - b. The basis for the arrest warrant in the other state;
  - c. The right to assistance of counsel; and
  - d. The right to require a judicial hearing under this Act before transfer of custody to the other state.
2. After being informed by the magistrate of the effect of a waiver, the arrested person may waive the right to require a judicial hearing under this Act and consent to return to the other state by executing a written waiver in the

presence of the magistrate. If the waiver is executed, the magistrate shall issue an order to transfer custody pursuant to section 21 or, with the consent of the official upon whose application the arrest warrant was issued in the other state, authorize the voluntary return of the person to that state.

3. Unless a waiver is executed pursuant to subsection 2, the magistrate shall:
  - a. Release the person upon conditions that will reasonably assure availability of the person for arrest pursuant to section 12 or section 18; or
  - b. Direct a law enforcement officer to maintain custody of the person.

Subject to section 7, the period of conditional release or custody may not exceed thirty days.

#### SECTION 7. (2-104) Extension of time.

1. If the person is not arrested pursuant to section 12 or section 18 within the period specified in the arrest warrant or other process, the magistrate for good cause may issue further orders under subsection 3 of section 6 for additional periods not exceeding a total of sixty days. Further extensions of orders may be requested by the person under subsection 3 of section 6.
2. If the person is not arrested pursuant to section 12 or section 18 within the time specified by the magistrate, the person may not be subjected to any further order in this state under subsection 3 of section 6. If the person is subsequently arrested in this state under section 4 or 5 on the basis of the same arrest warrant of the other state, the person may not be subjected to the issuance of orders under subsection 3 of section 6 and must be released from custody. However, the person may be arrested thereafter pursuant to section 12 or 18.

#### SECTION 8. (3-101) Demand for extradition.

1. The governor may recognize a written demand by an executive authority for the extradition of a person, alleging that the person:
  - a. Is charged with a crime in the demanding state; or,
  - b. Having been charged with or convicted of a crime in the demanding state has:
    - (1) Escaped from confinement; or

- (2) Violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the demanding state.
2. The governor may demand the extradition of a person from another state in accordance with the Constitution of the United States and may comply with the requirements of the other state for recognition of a demand.

**SECTION 9. (3-102) Supporting documentation.** A demand for extradition must be accompanied by a certified copy of an arrest warrant and one of the following:

1. A statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that a crime has been committed and the demanded person committed the crime, together with a copy of the provisions of law defining the crime and fixing the penalty therefor.
2. A certified copy of the indictment upon which the arrest warrant is based.
3. A statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that the demanded person has violated any term of bail, probation, or an order arising out of a criminal proceeding.
4. A certified copy of a judgment of conviction or a sentencing order accompanied by a statement by the issuing authority that the demanded person has escaped from confinement or violated any term of parole.

**SECTION 10. (3-103) Governor's investigation.** The governor may:

1. Investigate the demand for extradition and the circumstances of the demanded person;
2. Request the attorney general or any state's attorney to investigate; or
3. Hold a hearing.

**SECTION 11. (3-104) Extradition of persons imprisoned or awaiting trial.**

1. If a demanded person is being prosecuted, is imprisoned, is on parole or probation, or is subject to an order arising out of a criminal proceeding, in this state, the governor may:
  - a. Grant extradition;

- b. Delay action; or
  - c. Agree with the executive authority of the demanding state to grant extradition upon conditions.
2. The governor may agree with an executive authority of another state for the extradition of a person who is being prosecuted, is imprisoned, is on parole or probation, or is subject to an order arising out of a criminal proceeding, in that state upon conditions prescribed by the agreement.

**SECTION 12. (3-105) Governor's warrant.**

1. If the governor decides to comply with the demand for extradition, the governor shall issue a warrant for the arrest and extradition of the demanded person. The governor's warrant must recite the name of the state demanding extradition and the crime charged or other basis for the demand.
2. The governor may specify the time and manner in which the warrant is executed.
3. At any time before the transfer of custody of the demanded person to the agent of the demanding state, the governor may recall the warrant or issue another warrant.
4. The warrant must be directed to any law enforcement officer and require compliance with section 13.
5. The law relating to assistance in the execution of other arrest warrants in this state applies to the execution of the governor's warrant.

**SECTION 13. (3-106) Rights of demanded person.**

1. A person arrested under a governor's warrant must be brought forthwith before a magistrate, in the county where the person is arrested, who shall receive the warrant and inform the person of:
- a. The name of the state demanding extradition;
  - b. The crime charged or other basis for the demand;
  - c. The right to assistance of counsel; and
  - d. The right to a judicial hearing under section 14.
2. After being informed by the magistrate of the effect of a waiver, the demanded person may waive the right to a judicial hearing and consent to return to the demanding state by executing a written waiver in the presence of the

magistrate. If the waiver is executed, the magistrate shall issue an order to transfer custody pursuant to section 21 or, with the consent of the executive authority of the demanding state, authorize the voluntary return of the person.

3. If a hearing is not waived, the magistrate shall hold it within ten days after the appearance. The demanded person and the state's attorney of the county in which the hearing is to be held must be informed of the time and the place of the hearing. The magistrate shall:
  - a. Release the person upon conditions that will reasonably assure availability of the person for the hearing; or
  - b. Direct a law enforcement officer to maintain custody of the person.

#### SECTION 14. (3-107) Judicial extradition hearing.

1. If the magistrate after hearing finds that the governor has issued a warrant supported by the documentation required by subsection 1 of section 8 and section 9, the magistrate shall issue an order to transfer custody pursuant to section 21 unless the arrested person establishes by clear and convincing evidence that the arrested person is not the demanded person.
2. If the magistrate does not order transfer of custody, the magistrate shall order the arrested person to be released. If the agent of the demanding state has not taken custody within the time specified in the order to transfer custody, the demanded person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant is issued as a result of a new demand for extradition or a new request for rendition.
3. An order to transfer custody is not appealable.
4. An order denying transfer is appealable.

#### SECTION 15. (4-101) Request for rendition.

1. Subject to subsections 2 and 3, this state may grant a written request by an issuing authority of another state for the rendition of a person in this state.
2. The request must be refused if the requested person is:
  - a. Being prosecuted or is imprisoned in this state for a criminal offense;

- b. The subject of a pending proceeding in a juvenile court of this state brought for the purpose of adjudicating the person to be a delinquent child;
  - c. In the custody of an agency of this state pursuant to an order of disposition of a juvenile court of this state as a delinquent child; or
  - d. Under the supervision of the juvenile court of this state pursuant to informal adjustment or an order of disposition of the court.
3. The request must allege that the person:
    - a. Is charged with a crime punishable in the requesting state by death or imprisonment for a term exceeding one year in the requesting state; or
    - b. Having been charged with or convicted of a crime in the requesting state, has escaped from confinement or violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the requesting state.
  4. Upon application of the attorney general or a state's attorney, an issuing authority may request rendition of a person from another state and may comply with requirements of that state for the granting of the request. A correction official who is also an issuing authority may request rendition from another state of a person described in subdivision b of subsection 3, and subject to the jurisdiction of the correction official.

**SECTION 16. (4-102) Supporting documentation.** A request for rendition must be accompanied by a certified copy of the arrest warrant and one of the following:

1. A statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that a crime has been committed and the requested person committed the crime, together with a copy of the provisions of law defining the crime and fixing the penalty therefor.
2. A certified copy of the indictment upon which the arrest warrant is based.
3. A statement by the issuing authority that the warrant was issued after a determination of probable cause to believe that the requested person has violated any term of bail, probation, or other judicial order arising out of a criminal proceeding.

4. A certified copy of a judgment of conviction or a sentencing order accompanied by a statement by the issuing authority that the requested person has escaped from confinement or violated any term of parole.

**SECTION 17. (4-103) Filing of request.** A request for rendition under section 15 must be filed with the attorney general's office, which office shall forward the request to the proper state's attorney. The governor by written order may terminate the use of rendition at any time before the issuance of an order to transfer custody.

**SECTION 18. (4-104) Issuance of arrest warrant or process.** Upon receipt of a request under section 17, the prosecuting official shall apply to a magistrate for the issuance of an arrest warrant, or other process, to obtain the appearance of the requested person. If the magistrate finds that the provisions of sections 15 and 16 have been complied with, the magistrate shall issue the warrant or other process. The warrant must require that the person be brought forthwith before the magistrate. Other process to obtain the appearance of a person must require the appearance before a magistrate.

**SECTION 19. (4-105) Rights of requested person.**

1. The magistrate shall inform the person appearing pursuant to section 18 of:
  - a. The name of the state requesting rendition;
  - b. The basis for the arrest warrant in the other state;
  - c. The right to assistance of counsel; and
  - d. The right to require a judicial hearing pursuant to section 20.
2. After being informed by the magistrate of the effect of a waiver, the requested person may waive the right to a judicial hearing and consent to return to the requesting state by executing a written waiver in the presence of the magistrate. If the waiver is executed, the magistrate shall issue an order to transfer custody pursuant to section 21 or with consent of the official upon whose application the request was issued authorize the voluntary return of the person.
3. If a hearing is not waived, the magistrate shall hold it within ten days after the appearance. The requested person and the state's attorney of the county in which the hearing is to be held must be informed of the time and place of the hearing. The magistrate shall:

- a. Release the person upon conditions that will reasonably assure availability of the person for the hearing; or
- b. Direct a law enforcement officer to maintain custody of the person.

**SECTION 20. (4-106) Judicial rendition hearing.**

1. If the magistrate after hearing finds that sections 15 and 16 have been complied with, the magistrate shall issue an order to transfer custody pursuant to section 21 unless the arrested person establishes by clear and convincing evidence that arrested person is not the requested person.
2. If the magistrate does not order transfer of custody, the magistrate shall order the arrested person to be released. If the agent of the requesting state has not taken custody within the time specified in the order to transfer custody, the requested person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant is issued as a result of a new demand for extradition or a new request for rendition.
3. An order to transfer custody is not appealable.
4. An order denying transfer is appealable.

**SECTION 21. (5-101) Order to transfer custody.**

1. Except as provided in subsection 2, a judicial order to transfer custody issued pursuant to section 6, 13, 14, 19, or 20 must direct a law enforcement officer to take or retain custody of the person until an agent of the other state is available to take custody. If the agent of the other state has not taken custody within ten days, the magistrate may:
  - a. Order the release of the person upon conditions that will assure the person's availability on a specified date within thirty days; or
  - b. Extend the original order for an additional ten days upon good cause shown for the failure of an agent of the other state to take custody.
2. If the agent of the other state has not taken custody within the time specified in the order, the person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant or other process to obtain appearance of a person is issued as a result of a new demand for extradition or a new request for rendition.

3. The magistrate in the order may authorize the voluntary return of the person with consent of the executive authority or with the consent of the official upon whose application the request for rendition was made.

**SECTION 22. (5-102) Confinement.** An agent who has custody of a person pursuant to an order to transfer custody issued in any state may request confinement of the person in any detention facility in this state while transporting the person pursuant to the order. Upon production of proper identification of the agent and a copy of the order, the detention facility shall confine the person for that agent. The person is not entitled to another extradition or rendition proceeding in this state.

**SECTION 23. (5-103) Cost of return.** Unless the states otherwise agree, the state to which the person is being returned shall pay the cost of returning the person incurred after transfer of custody to its agent.

**SECTION 24. (5-104) Applicability of other law.**

1. A person returned to this state is subject to the law of this state as well as the provisions of law that constituted the basis for the return.
2. This Act does not limit the powers, rights, or duties of the officials of a demanding, or requesting, state or of this state.

**SECTION 25. (5-105) Payment of transportation and subsistence costs.** If a person returned to this state is found not to have violated the law that constituted the basis for the return, the magistrate may order the county or state to pay the person the cost of transportation and subsistence to:

1. The place of the person's initial arrest; or
2. The person's residence.

**SECTION 26. Time of taking effect.** This Act takes effect and governs all extraditions and renditions initiated after June 30, 1985.

**SECTION 27. REPEAL.** Chapter 29-30.1 of the North Dakota Century Code, chapter 29-30.2 of the 1983 Supplement to the North Dakota Century Code, and section 29 of chapter 375 of the 1979 Session Laws are hereby repealed.

Approved March 28, 1985

## CHAPTER 365

HOUSE BILL NO. 1093  
(Representatives Murphy, O. Hanson)  
(Senator D. Meyer)

## CONFISCATION OF PROPERTY USED IN THEFT OF LIVESTOCK

AN ACT to create and enact a new section to chapter 29-31 of the North Dakota Century Code, relating to the confiscation of property used in the theft of livestock; and to amend and reenact sections 29-31-03, 29-31-04, and 29-31-08 of the North Dakota Century Code, relating to the confiscation of equipment used in commission of crime.

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

SECTION 1. A new section to chapter 29-31 of the North Dakota Century Code is hereby created and enacted to read as follows:

Theft of livestock - Confiscation of property. A court having jurisdiction over the criminal prosecution of any person, following the conviction of that person for committing or attempting to commit the theft of any livestock, or transporting any stolen livestock, may order the confiscation and forfeiture to the state of any personal property used in the theft or transportation of livestock, if that property was not confiscated under section 29-31-01.

SECTION 2. AMENDMENT. Section 29-31-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-31-03. Court to order forfeiture of vehicle. The district court, upon conviction of the person arrested, or upon his entry of a plea of guilty, or upon the failure of the officer after one month of effort to locate or arrest the person who used such vehicle or other means of conveyance in connection with the commission of the felony, shall order the vehicle or other means of conveyance ~~se~~ confiscated under section 29-31-01 to be forfeited.

SECTION 3. AMENDMENT. Section 29-31-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-31-04. Summons on forfeiture - Contents and service. The district court shall require the state's attorney of the county in which the ~~felony~~ crime was committed to cause a summons to be issued out of

the district court against all persons having any right, title, or interest in the property seized under section 29-31-01 or section 1 of this Act. Such summons shall describe the property with particularity and shall state that the same is held for forfeiture and sale under the provisions of this chapter and that in default of an answer or claim filed within thirty days after the service of the summons the court will enter its order forfeiting such property to the state of North Dakota. The summons shall be served in the manner provided for the service of summons in a civil action. When the name of the owner of such property can be ascertained, such summons shall be served upon him personally or by registered or certified mail.

**SECTION 4. AMENDMENT.** Section 29-31-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**29-31-08. Disposition of proceeds of sale.** After deducting the costs and expenses of a proceeding for sale under this chapter, the balance of all money received under the provisions of the chapter shall be paid to the treasurer of the county wherein the ~~felony~~ crime was committed for the benefit of the state school fund.

Approved March 14, 1985

## CHAPTER 366

SENATE BILL NO. 2181  
(Committee on Judiciary)

(At the request of the Commission on Uniform State Laws)

# UNIFORM POSTCONVICTION PROCEDURE ACT

AN ACT to adopt the Uniform Postconviction Procedure Act (1980), relating to a remedy to a person convicted of and sentenced for a crime and the procedure for challenging the validity of the conviction or sentence; to repeal chapter 29-32 of the North Dakota Century Code, relating to the Uniform Postconviction Procedure Act; and to provide an effective date.

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

### SECTION 1. Remedy - To whom available - Conditions.

1. A person who has been convicted of and sentenced for a crime may institute a proceeding applying for relief under this Act upon the ground that:
  - a. The conviction was obtained or the sentence was imposed in violation of the laws or the Constitution of the United States or of the laws or Constitution of North Dakota;
  - b. The conviction was obtained under a statute that is in violation of the Constitution of the United States or the Constitution of North Dakota, or that the conduct for which the applicant was prosecuted is constitutionally protected;
  - c. The court that rendered the judgment of conviction and sentence was without jurisdiction over the person of the applicant or the subject matter;
  - d. The sentence is not authorized by law;
  - e. Evidence, not previously presented and heard, exists requiring vacation of the conviction or sentence in the interest of justice;

- f. A significant change in substantive or procedural law has occurred which, in the interest of justice, should be applied retrospectively;
  - g. The sentence has expired, probation or parole or conditional release was unlawfully revoked, or the applicant is otherwise unlawfully in custody or restrained; or
  - h. The conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error available before July 1, 1985, under any common law, statutory or other writ, motion, proceeding, or remedy.
2. A proceeding under this Act is not a substitute for and does not affect any remedy incident to the prosecution in the trial court or direct review of the judgment of conviction or sentence in an appellate court. Except as otherwise provided in this Act, a proceeding under this Act replaces all other common law, statutory, or other remedies available before July 1, 1985, for collaterally challenging the validity of the judgment of conviction or sentence. It is to be used exclusively in place of them. A proceeding under this Act is not available to provide relief for disciplinary measures, custodial treatment, or other violations of civil rights of a convicted person occurring after the imposition of sentence.

**SECTION 2. Exercise of original jurisdiction in habeas corpus.** A court in which original jurisdiction in habeas corpus is vested may entertain a habeas corpus proceeding under chapter 32-22 or this Act. This Act, to the extent appropriate, governs the proceeding.

**SECTION 3. Commencement of proceedings - Filing - Service.**

1. A proceeding is commenced by filing an application with the clerk of the court in which the conviction and sentence took place. The state must be named as respondent. No filing fee is required.
2. An application may be filed at any time.
3. If an application is filed before the time for appeal from the judgment of conviction or sentence has expired, the court, on motion of the applicant, may extend the time for appeal until a final order has been entered in the proceeding under this Act.
4. If an application is filed while an appeal or other review is pending, the appellate court, on motion of either party or on its own motion, may defer further action on the appeal or other review until the determination of the application by the trial court or may order the

application certified and consolidated with the pending appeal or other review.

5. Upon receipt of an application, the clerk shall forthwith file it, make an entry in the appropriate docket, and deliver a copy to the state's attorney of the county in which the criminal action was venued.
6. If the applicant is not represented by counsel, the clerk shall notify the applicant that assistance of counsel may be available to persons unable to obtain counsel. The clerk shall also inform the applicant of the procedure for obtaining counsel.
7. The application may be considered by any judge of the court in which the conviction took place.

#### **SECTION 4. Application - Contents.**

1. The application must identify the proceedings in which the applicant was convicted and sentenced, give the date of the judgment and sentence complained of, set forth a concise statement of each ground for relief, and specify the relief requested. Argument, citations, and discussion of authorities are unnecessary.
2. The application must identify all proceedings for direct review of the judgment of conviction or sentence and all previous postconviction proceedings taken by the applicant to secure relief from the conviction or sentence, the grounds asserted therein, and the orders or judgments entered. The application must refer to the portions of the record of prior proceedings pertinent to the alleged grounds for relief. If the cited record is not in the files of the court, the applicant shall attach that record or portions thereof to the application or state why it is not attached. Affidavits or other material supporting the application may be attached, but are unnecessary.

#### **SECTION 5. Appointment of counsel - Applicant's inability to pay costs and litigation expenses.**

1. If an applicant requests appointment of counsel and the court is satisfied that the applicant is unable to obtain adequate representation, the court shall appoint counsel to represent the applicant.
2. Costs and expenses incident to a proceeding under this Act, including fees for appointed counsel, must be reimbursed in the same manner as are costs and expenses incurred in the defense of criminal prosecutions.

#### **SECTION 6. Response by answer or motion.**

1. Within thirty days after the docketing of an application or within any further time the court may allow, the state shall respond by answer or motion.
2. The state may move to dismiss an application on the ground that it is evident from the application that the applicant is not entitled to postconviction relief and no purpose would be served by any further proceedings. In considering the motion, the court shall take account of substance regardless of defects of form.
3. The following defenses may be raised by answer or motion:
  - a. The claim has been fully and finally determined in a previous proceeding in accordance with subsection 1 of section 12; or
  - b. The application constitutes misuse of process in accordance with subsection 2 of section 12.

#### SECTION 7. Amended and supplemental pleadings.

1. The court may make appropriate orders allowing amendment of the application or any pleading or motion, allowing further pleadings or motions, or extending the time for filing any pleading.
2. At any time before the entry of judgment, the court, for good cause, may grant leave to withdraw the application without prejudice.

**SECTION 8. Discovery.** The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner the court has ordered or to which the parties have agreed.

#### SECTION 9. Summary disposition.

1. The court may grant a motion by either party for summary disposition if the application, pleadings, any previous proceeding, discovery, or other matters of record show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.
2. If an evidentiary hearing is necessary, the court may determine which issues of material fact are in controversy and appropriately restrict the hearing.

#### SECTION 10. Hearing - Evidence.

1. Evidence must be presented in open court, recorded, and preserved as part of the record of the proceedings.

2. A certified record of previous proceedings may be used as evidence of facts and occurrences established therein, but use of that record does not preclude either party from offering additional evidence as to those facts and occurrences.
3. The deposition of a witness may be received in evidence, without regard to the availability of the witness, if written notice of intention to use the deposition was given in advance of the hearing and the deposition was taken subject to the right of cross-examination.

**SECTION 11. Findings of fact - Conclusions of law - Order.**

1. The court shall make explicit findings on material questions of fact and state expressly its conclusions of law relating to each issue presented.
2. If the court rules that the applicant is not entitled to relief, its order must indicate whether the decision is based upon the pleadings, is by summary disposition, or is the result of an evidentiary hearing.
3. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the previous proceedings, and any supplementary orders as to arraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper.

**SECTION 12. Affirmative defenses - Res judicata - Misuse of process.**

1. An application for postconviction relief may be denied on the ground that the same claim or claims were fully and finally determined in a previous proceeding.
2. A court may deny relief on the ground of misuse of process. Process is misused when the applicant:
  - a. Presents a claim for relief which the applicant inexcusably failed to raise either in a proceeding leading to judgment of conviction and sentence or in a previous postconviction proceeding; or
  - b. Files multiple applications containing a claim so lacking in factual support or legal basis as to be frivolous.
3. Res judicata and misuse of process are affirmative defenses to be pleaded by the state. The burden of proof is also upon the state, but, as to any ground for relief which, by statute or rule of court, must be presented as a defense or objection at a specified stage of a criminal

prosecution, the applicant shall show good cause for noncompliance with the statute or rule.

**SECTION 13. Reimbursement of costs and litigation expenses.** If an application is denied, the state may move for an order requiring the applicant to reimburse the state for costs and for litigation expenses paid for the applicant from public funds. The court may grant the motion if it finds that the applicant's claim is so completely lacking in factual support or legal basis as to be frivolous or that the applicant has deliberately misused process. The court may require reimbursement of costs and expenses only to the extent reasonable in light of the applicant's present and probable future financial resources.

**SECTION 14. Review.** A final judgment entered under this Act may be reviewed by the supreme court of this state upon appeal filed either by the applicant within ten days or by the state within thirty days after the entry of judgment.

**SECTION 15. EFFECTIVE DATE.** This Act governs all convictions occurring after June 30, 1985.

**SECTION 16. REPEAL.** Chapter 29-32 of the North Dakota Century Code is hereby repealed.

Approved March 30, 1985