

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 366

SENATE BILL NO. 2367
(Olson)

REPORT TO SHERIFF BY SUMMONED PERSON

AN ACT to require a person summoned to court on a felony charge to submit to the sheriff for identification purposes; and to amend and reenact section 12-60-10 of the North Dakota Century Code, relating to records of the bureau of criminal investigation.

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

SECTION 1. Summomed person to report to sheriff. Whenever a person charged with a felony is not arrested but is summoned to appear in court, that person must submit to the sheriff for identification procedures at the time of the first court appearance.

SECTION 2. AMENDMENT. Section 12-60-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-60-10. Fingerprints, photographs, description of persons ~~arrested~~ for charged with felony to be procured and filed. The chief of the bureau shall procure and file for record in the offices of the bureau all the plates, fingerprints, photographs, outline pictures, descriptions, information, and measurements which can be procured of all persons who have been ~~or shall be arrested for~~ any charged with a felony under the laws of this or any other state, or of the United States, and of all well-known and habitual criminals. The person in charge of any state penal institution and every state's attorney, sheriff, chief of police, or other police officer shall furnish any such material to the superintendent upon ~~his~~ the superintendent's request.

Approved April 8, 1983

CHAPTER 367

HOUSE BILL NO. 1160
(Committee on Judiciary)
(At the request of the Attorney General)

DEFINITION OF PEACE OFFICER

AN ACT to amend and reenact section 29-05-10 of the North Dakota Century Code, relating to the definition of a peace officer.

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

SECTION 1. AMENDMENT. Section 29-05-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-05-10. "Peace officer" defined. A peace officer is a sheriff of a county or his deputy, or a coroner, constable, marshal, or policeman of a township or city, or any state or federal law enforcement officer.

Approved March 3, 1983

CHAPTER 368

HOUSE BILL NO. 1633
(Conmy)

DEMAND FOR CHANGE OF JUDGE

AN ACT to amend and reenact section 29-15-21 of the North Dakota Century Code, relating to demands for change of judge.

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

SECTION 1. AMENDMENT. Section 29-15-21 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-15-21. Demand for change of judge.

1. Subject to the provisions of this section, any party to a civil or criminal action or proceeding pending in the district court ~~of~~ or any county court in this state may obtain a change of the judge before whom the trial or any proceeding with respect thereto is to be heard, by filing with the clerk of the court in which the action or proceeding is pending a written demand for change of judge, executed in triplicate by either:
 - a. By the personal signature of the party, if an individual, and by personal signature of an authorized officer, if a corporation or association; or
 - b. By the attorney for a party with the permission of the party, in which event the attorney shall file with the demand a certificate that the attorney has mailed a copy of the demand to such party.
2. The demand is not operative invalid unless it is filed with the clerk of the court at least three days before the matter is to be heard if upon a motion or upon arraignment, or ten days before the date the action or proceeding is scheduled for trial not later than ten days after the occurrence of the earliest of any one of the following events:

- a. The date of the notice of assignment or reassignment of a judge for trial of the case;
 - b. The date of notice that a trial has been scheduled; or
 - c. The date of service of any ex parte order in the case signed by the judge against whom the demand is filed.
3. Any party who has been added, voluntarily or involuntarily, to the action or proceeding after the date of any occurrence in subsection 2 has the right to file a demand for change of judge within ten days after any remaining event occurs or, if all of those events have already occurred, within ten days after that party has been added. In any event, no demand for a change of judge may be made after the judge sought to be disqualified has ruled upon any matter pertaining to the action or proceeding in which the demanding party was heard or had an opportunity to be heard. Any proceeding to modify an order for alimony, property division, or child support pursuant to section 14-05-24 or an order for child custody pursuant to section 14-05-22 shall be considered a proceeding separate from the original action and the fact that the judge sought to be disqualified made any ruling in the original action shall not bar a demand for a change of judge.
- 3- 4. The demand for change of judge shall state that it is filed in good faith and not for the purposes of delay. It shall indicate the nature of the action or proceeding, designate the judge sought to be disqualified, and certify that he has not ruled upon any matter pertaining to the action or proceeding in which the moving party was heard or had an opportunity to be heard.
- 4- 5. Upon the filing of the demand for change of judge, the clerk shall 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.
- 5- 6. Upon receipt of a copy of a ~~timely filed~~ demand for change of judge, the judge sought to be disqualified has no authority or discretion to determine the timeliness or validity of the demand and shall proceed no further or take any action in the action or proceeding and is thereafter disqualified from doing any further act in the cause unless the demand is invalidated by the presiding judge. The judge sought to be disqualified shall promptly submit to the presiding judge any comments the judge may have regarding the demand. If the presiding judge thereafter invalidates the demand because it was not timely filed or for other reasons, the judge sought to be disqualified shall resume jurisdiction in the case and hear and determine the case to conclusion.

- 6- 7. If a demand for a change of judge has been made and another judge assigned by the presiding judge of the judicial district, the 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 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 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 presiding judge pursuant to a previous demand.
- 7- 8. 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 presiding judge of the judicial district in which the demand is filed shall promptly designate a ~~district~~ another judge to act in the place and stead of the judge disqualified.
- 8- 9. The judge designated, as soon as possible after receiving such notice of the assignment from the presiding judge of the ~~judicial~~ district and during the same term unless agreement to the contrary is made by the parties, shall promptly 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 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 presiding judge to act in said action.

Approved March 10, 1983