1999 HOUSE JUDICIARY

HCR 3017

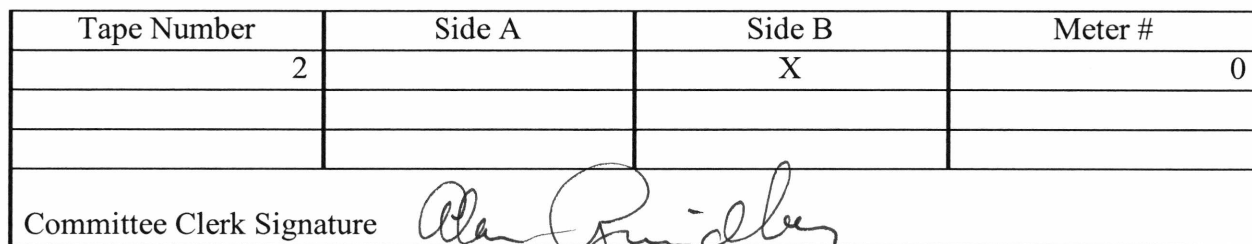
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 3017

House Judiciary Committee

❑ Conference Committee

Hearing Date : February 8. 1999

Tape Number	Side A	Side B	Meter #
2		X	0
Committee Clerk Signature 			

Minutes:

REP. MICKELSON Submitted prepared testimony, a memo from Ted Gladden and letters from John Greenwood and Joan Halvorson in Jamestown, a copy of all of which is attached

LARRY ERICKSON (Asst Morton Co. SA) I think the people need to be heard on this issue. At the time the Constitution was adopted there was no organized police forces nor any statutory criminal lw. That climate has changed with new laws on traffic, DUI, etc. Most “B” misdemeanors are not based on intent, but are strict liability crimes. The purpose of the jury was to measure intent.

DOUG MATTSON (Ward Co SA) I support HCR 3017 with the suggested amendments. This will help move more cases along.

JACK MCDONALD (NDTLA) Submitted written testimony, a copy of which is attached.

COMMITTEE ACTION: February 9, 1999

REP. MAHONEY moved that the bill be amended to limit time to 30 days instead of six months.

Rep. Maragos seconded and the amendments were adopted on a unanimous voice vote.

REP. SVEEN moved that the committee recommend that the bill DO NOT PASS AS AMENDED. Rep. Kelsh seconded and the motion failed on a roll call vote of 7 ayes, 8 nays and 0 absent.

REP. CLEARY moved that the committee recommend that the bill DO PASS AS AMENDED. Rep. Mahoney seconded and the motion was passed on a roll call vote with 8 ayes, 7 nays and 0 absent. Rep. Klemin was assigned to carry the bill on the floor.

Date: 2/9/
Roll Call Vote #:

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3017

House JUDICIARY Committee

☐ Subcommittee on
or
☐ Conference Committee

Legislative Council Amendment Number

Action Taken Do Not Pass as Am—

Motion Made By Sveen Seconded By Kelsh

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY		✓	REP. KELSH	✓	
REP. CLEARY		✓	REP. KLEMIN		✓
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD		✓	REP. MAHONEY		✓
REP. FAIRFIELD	✓		REP. MARAGOS	✓	
REP. GORDER		✓	REP. MEYER	✓	
REP. GUNTER		✓	REP. SVEEN	✓	
REP. HAWKEN		✓			

Total Yes 7 No 8

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 2/9/99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3017

House JUDICIARY Committee

☐ Subcommittee on
or
☐ Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended

Motion Made By Cleary Seconded By Mahoney

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH		✓
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE		✓	REP. KOPPELMAN		✓
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD		✓	REP. MARAGOS	✓	
REP. GORDER		✓	REP. MEYER		✓
REP. GUNTER	✓		REP. SVEEN		✓
REP. HAWKEN	✓				

Total Yes 8 No 7

Absent 0

Floor Assignment ~~Klemin~~ Mahoney

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HCR 3017: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 7 NAYS, 0 ABSENT AND NOT VOTING). HCR 3017 was placed on the Sixth order on the calendar.

Page 1, line 5, replace "six months" with "thirty days"

Page 1, line 18, replace "six months" with "thirty days"

Page 1, line 20, replace "six months" with "thirty days"

Renumber accordingly

1999 SENATE JUDICIARY

HCR 3017

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR3017

Senate Judiciary Committee

❑ Conference Committee

Hearing Date March 8, 1999

Tape Number	Side A	Side B	Meter #
1	x		0 - 3040
3-9-99 2	x		4000 - 4300
Committee Clerk Signature Jackie Follman			

Minutes:

HCR3017 relates to the right to a jury trial.

SENATOR STENEHJEM opened the hearing on HCR3017 at 9:00 A.M.

All were present except Senator C. Nelson.

REPRESENTATIVE MICKELSON, District 38, testified in support of HCR3017. Testimony attached.

SENATOR TRAYNOR asked what the Legislative Assembly has done regarding the cases that are punishable for 1 year in jail. Have they provided for the 6-man trial.

REPRESENTATIVE MICKELSON stated that he couldn't answer that, but there were State's Attorney's present who could.

SENATOR TRAYNOR asked if the Courts are so far behind in North Dakota.

REPRESENTATIVE MICKELSON stated that the State's Attorney's would answer that but yes, they are.

LADD ERICKSON, Asst. Morton County State's Attorney, testified in support of HCR3017. The purpose of having a jury is sound and reasonable. Having a jury come in when there is no community norm purpose it is already established. The theory of the jury is taken away by legislation.

SENATOR STENEHJEM stated that you are arguing that we don't need a Judge either. Because it is per se we don't need a jury since the Legislature has established that this person is guilty.

LADD ERICKSON stated no, the Judge would perform the same rule. The Judge in a per se type of jury trial handles admissibility and Constitutional issues and if he determines the foundation and the stuff is laid properly, the best trier of the fact. It creates more uniform justice.

SENATOR STENEHJEM asked how backed up are the Courts in Morton County.

LADD ERICKSON stated that they are awful. 40 percent of the jury trials are in our District.

SENATOR STENEHJEM asked how they schedule pre-trial conferences. In Grand Forks, we are told by the Judge if you don't have the case settled by the Friday before we call the jury in there will not be a plea agreement.

LADD ERICKSON stated that if you haven't scheduled by the pre-trial conference you can't take a plea.

SENATOR STENEHJEM asked how backed up they are.

LADD ERICKSON stated that it is 6 - 8 months. 5 - 6 weeks Bench Trial.

JACK MCDONALD, North Dakota Trial Lawyers, testified in opposition of HCR3017. Testimony attached.

SENATOR TRAYNOR asked what criminal cases permit a 6-man jury.

JACK MCDONALD stated misdemeanors.

CHAD NODLAND, Attorney in Bismarck, testified in opposition of HCR3017. He described the lists of misdemeanors. A Judge in Ward County told me what is clogging the Courts is domestic relations.

CHAD MCCABE, Attorney in Bismarck, testified in opposition of HCR3017. Testimony attached.

RALPH A. VINJE, Attorney in Bismarck, submitted written testimony in opposition of HCR3017. Testimony attached.

SENATOR TRAYNOR asked how many criminal defense attorneys were in North Dakota.

CHAD MCCABE stated that there are less than 40 actively - less than 25 that do it all the time.

SENATOR STENEHJEM CLOSED the hearing on HCR3017.

MARCH 9, 1999 TAPE 2, SIDE A

Discussion.

SENATOR WATNE made a motion for DO PASS. There was no second so motion failed.

SENATOR TRAYNOR made a motion for DO NOT PASS, SENATOR LYSON seconded.

Discussion. Motion carried. 5 - 1 - 0

SENATOR STENEHJEM will carry the bill.

Date: 3-9-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3017

Senate Judiciary Committee

☐ Subcommittee on
or
☐ Conference Committee

Legislative Council Amendment Number

Action Taken Do Not Pass

Motion Made By Senator Traynor Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne		X			
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Caroloyn Nelson	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Senator Stenehjem

REPORT OF STANDING COMMITTEE

HCR 3017, as engrossed: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **DO NOT PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HCR 3017 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

HCR 3017

Chairman DeKrey and members of the House Judiciary Committee:

For the record I am State Representative Stacey L. Mickelson and I represent District 38 which comprises the Northwest corner of the city of Minot, the city of Burlington, one-half of the MAFB and 5 rural townhips of Ward County.

This idea has its origins in the court unification, whereby the North Dakota Legislature mandated there be a maximum number of district court judges of 42 by the year 2000-2001. A study by the National Judicial Center (NJC) released in January of 1998 said the number 42 is workable. Yet many in the state have said that the number is too low and that access to the courts was delayed and even slow when more judges were sitting before unification.

One way to help move these cases through the system faster (and still provide full due-process allowed under the US Constitution) is to amend Article I, Sec. 13 of the North Dakota Constitution on the right to jury trial in criminal cases so that it tracts the federal right to jury trial. This constitutional change to Article I, Sec. 13 of the North Dakota Constitution would remove the right to jury trials for crimes punishable up to 6 months. These are typically Class 'B' Misdemeanors such as DUI and NSF offenses.

The United States Constitution does not guarantee a person right to jury trial, if that person would be serving six months or less in jail. There are several United State's Supreme Court Cases included here to back that up. I have also included from the National Conference of State Legislatures (NCSL) information on the states that currently track this portion of the US Constitution into their state constitutions.

In Codispoti (1974) the United State's Supreme Court has established that there are 'petty' crimes and 'serious' crimes. Those crimes that carry a sentence of 6 months incarceration or less are 'petty' crimes under that ruling. In North Dakota Class 'B' Misdemeanors would be considered 'petty' under the US Supreme Court definition (see Baldwin v. New York{1970}, attached).

Often times if a person is charged with a Class 'B' Misdemeanor in North Dakota that person does not serve any jail time. Yet the ND Constitution currently guarantees the right to jury trial for all offenses that would carry a sentence requiring possible jail time. This is a guarantee regardless of whether or not the State intends to reccomend jail time even if the person is found guilty. The impending result of such action is that the ND court system is jammed and clogged up with jury trials for matters that the federal constitution views to be 'petty' crimes and where a person is not at significant risk of losing their freedom.

In Ward County, it costs the state (not the county) an average of $1,000 to bring in a jury on a 'petty' crime trial. This figure does not account for the costs of witnesses, travel and other items associated with juries. Currently, there are just over 52 Class "B" Misdemeanor trials scheduled for some 25 trial dates between February and May 1999 in Ward County District Court. Many of the 52 are transfers from the Municipal Courts in Burlington and Minot. That is a cost to the state of $25,000 (25 dates X $1,000) on 'petty' crimes in just the next four months for jury trials

not guaranteed under the US Constitution. Keep in mind that Ward County is ND's fourth most populated county. I have yet to get the numbers for the other districts, including the top three most populated.

The problem for Ward County, and most other counties I suspect, is that many defendants and their counsel push for a jury trial, effectively stalling justice and buying time. Between the pre-trial conference and the actual week of the trial, which is generally about 6 months, a good majority of the defendants plead and cut deals - many of them doing so the actual week of the trial. This action makes all of the hard work of the court adminstrators, the state's attorneys and the judges wasted, not to mention the financial resources.

The Ward County Clerk of District Court sends out 30 juror notices for each Class "B" Misdemeanor trial date, requiring the attendance of the selected to appear for jury duty. Each person in the jury pool remains there until they have either served as a juror or have received three notices. If you have ever been summoned for this duty, however necessary in our form of justice, you know that it can be at best an inconvenience - not to mention the burden on many employers who lose valuable employees for days on end, to trials that are considered 'petty' under the US Constitution.

This amendment would bring into line the ND Constitution with the US Constitution; this amendment in no way removes the rights of ND citizens guaranteed under the US Constitution; and, this amendment is meant to make the 42 District Judge requirement workable for the public while prioritizing ND's scarce judicial resources. The real issue now becomes one of accessibility for people to come before the court to be heard in both civil and criminal actions. We need also to think of the victims who deserve to have cases resolved quickly so as to put terrible events behind them.

Generally, the State and the Defendant have a right to a speedy trial. However, when these cases block and log-jam the system, society loses. When these cases do come before the court witnesses may not remember a particular event as clearly six and seven months out as they would two to three months from the time the crime took place. This is a very big roadblock to personal crime cases where the defendant and victim know each other, as in simple-assault domestic violence cases. Also, with these delays, witnesses may move out-of-state before the matter comes to trial, therefore costing the State more money in returning them to the jurisdiction of the court.

With the jury trial calendar backed up, the victims of crimes such as simple-assault, theft of property, and criminal mischief, ultimately have to suffer longer before justice is served. Defendants committing domestic violence are usually charged with Class "B" Misdemeanor simple-assault. Under the present system providing jury trials, domestic situations are not being resolved in a quick and efficient manner and the problems causing the domestic situation are not being addressed until six and seven months down the road.

This amendment recognizes that there is a limit to public resources and prioritizes how the funds appropriated would be utilized. The North Dakota Constitution guarantees many rights to

criminal defendants. Among these guarantees are the right to legal counsel, one appointed at State expense if they can not afford one, and the right to jury trial. However, there is an exception to these rights. If the State does not intend to recommend that the defendant serve any jail time, or if the Court does not intend to sentence a defendant to serve any jail time, the defendant does not have the right to Court-appointed legal counsel. The right to jury trial does not have this exception. Currently, the right to jury trial is given to a criminal defendant regardless of whether or not the defendant will be sentenced to serve any actual jail time. This needs to be changed as the US Constitution and several other states provide. In closing, I urge you to remember that even if we as a legislative body pass this resoultion, we still have to defer to the wisdom of the people of the Great State of North Dakota who would ultimately decide the fate of this measure.

State of North Dakota

OFFICE OF STATE COURT ADMINISTRATOR

KEITHE E. NELSON
STATE COURT ADMINISTRATOR

SUPREME COURT
Judicial Wing, 1st Floor
600 East Boulevard Avenue
BISMARCK, ND 58505-0530
(701) 328-4216
(FAX) 701-328-4480

January 28, 1999

TO: Representative Stacey Mickelson

FROM: Ted Gladden

SUBJECT: House Concurrent Resolution 3017

This memorandum is in response to your request and a follow-up to the data provided to you last week regarding misdemeanor jury trials. Attached is a copy of the data compiled for your review. From September 30, 1997, through September 30, 1998, of the 368 jury trials held in North Dakota, 205 or 56% were misdemeanor jury trials. While this number includes both misdemeanor A and B jury trials, the vast majority are misdemeanor B trials. This would include trials involving driving under the influence, license suspensions, and non-sufficient funds (NSF) cases, in addition to other class B misdemeanors. These cases, by nature, are generally tried in one day.

The impact of HCR 3017 would be, in part, to allow judges to focus on more serious offenses if this number of jury trials are not conducted. Certainly the right to a trial before a district judge would be preserved, but I suspect the number of cases tried to the court would be small in contrast to the number of jury trials held. This would have a positive impact on judicial resources.

Court trials move faster than jury trials and require fewer resources. Not calculated in the figures attached are the labor costs of the clerk personnel for the summoning process. Jurors must be qualified, summoned, and impaneled. Also, I did not include any mileage figures, parking expenses, or meals for jurors. These items are not substantial, but they would increase the total savings to the state based on HCR 3017.

If I can be of further assistance, please contact me.

TG/cs
Attachments

G:\WP\CONNIE\TED\Ted.87 - Rep Mickelson Re Jury Trial Statistics.wpd

TOTAL JURY TRIALS

(09/30/97 - 09/30/98)

Total Jury Trial	368
Total Misdemeanors	205
Percent of Total	56%

Number of Jurors Summoned	9120
2 Bailiffs per trial	736
	9856
@ $25	$246,400

RAY A. LEWIS, Petitioner

v

UNITED STATES

518 US —, 135 L Ed 2d 590, 116 S Ct —

[No. 95-6465]

Argued April 23, 1996. Decided June 24, 1996.

Decision: Federal criminal defendant prosecuted in single proceeding for multiple petty offenses, each punishable by maximum of 6 months imprisonment, held not entitled to jury trial despite potential aggregate prison term in excess of 6 months.

SUMMARY

An accused, a mail handler for the United States Postal Service, was charged with two counts of obstructing the mail, in violation of 18 USCS § 1701, after having been seen by postal inspectors opening mail and removing currency. Each count carried a maximum authorized prison sentence of 6 months. The accused requested a jury trial, but a magistrate judge (1) granted the government's motion for a bench trial, and (2) explained that the accused was not entitled to a jury trial because the judge would not, under any circumstances, sentence the accused to more than 6 months' imprisonment. A Federal District Court affirmed the denial of a jury trial. The United States Court of Appeals for the Second Circuit, affirming, (1) noted that the Federal Constitution's Sixth Amendment right to jury trial pertains to only serious offenses, those for which the legislature has authorized a maximum penalty of over 6 months' imprisonment, and (2) concluded that (a) for determination of the right to a jury trial, the proper focus is on the legislature's determination regarding the character of the offense, not on the length of the maximum aggregate sentence faced, and (b) because each offense charged in the case at hand was petty in character, the accused was not entitled to a jury trial (65 F3d 252).

On certiorari, the United States Supreme Court affirmed. In an opinion by O'CONNOR, J., joined by REHNQUIST, Ch. J., and SCALIA, SOUTER, and THOMAS, JJ., it was held that the accused had no federal constitutional right to a jury trial, since (1) the Sixth Amendment reserves the right to a jury trial for serious crimes, as determined by the judgment of the legislature as expressed in the maximum term of imprisonment; and (2) the fact that the

accused was charged with multiple counts of a petty offense did not (a) change the legislative judgment as to the gravity of that particular offense, or (b) transform the petty offense into a serious one.

KENNEDY, J., joined by BREYER, J., concurring in the judgment, expressed the view that (1) the accused in the case at hand had no constitutional right to a jury trial because it was settled from the outset that he could be sentenced to no more than 6 months' imprisonment; but (2) prior Supreme Court decisions establish the proposition that an accused is entitled to a jury trial if tried in a single proceeding for more than one petty offense when the combined sentences will exceed 6 months' imprisonment.

STEVENS, J., joined by GINSBURG, J., dissenting, expressed the view that (1) the right to a jury trial attaches when the prosecution begins; (2) the legislature's determination of the severity of the charges is properly measured by the maximum sentence authorized for the prosecution as a whole; (3) the rule that a judge may not strip a defendant of the right to a jury trial for a serious crime by promising a sentence of 6 months or less applies to prosecutions which are serious by virtue of their aggregate possible sentences; and (4) therefore, the accused in the case at hand was entitled to a jury trial because he was charged with offenses carrying a statutory maximum prison sentence of more than 6 months.

HEADNOTES

Classified to United States Supreme Court Digest, Lawyers' Edition

Jury § 17.3 — right to jury trial — petty offenses — aggregate prison term

1a-1c. A federal criminal defendant who is prosecuted in a single proceeding for multiple petty offenses, each of which carries a maximum authorized prison term of 6 months, does not have a federal constitutional right to a jury trial where the aggregate prison term authorized for the offenses exceeds 6 months, since (1) the Federal Constitution's Sixth Amendment reserves the right to a jury trial to defendants accused of serious crimes, as determined by the judgment of the legislature as expressed in the maximum term of imprisonment; (2) the fact that a defendant is charged with multiple counts of a petty offense (a) does not change the legislative judgment as to the gravity of that particular offense, or (b) transform the petty offense into a serious one; and (3) prior United States Supreme Court decisions, involving multiple charges of petty offenses and holding the defendants in those cases entitled to jury trials, may be distinguished. (Kennedy, Breyer, Stevens, and Ginsburg, JJ., dissented from this holding.)

Jury § 17.3 — right to jury trial — petty offenses

2. In determining whether an offense is petty, and thus not subject to the federal constitutional right to a jury trial, the United States Supreme Court will consider the maximum penalty attached to the offense, the criterion which is considered most relevant with which to assess the character of an offense because the criterion reveals the legislature's judgment about the severity of the

offense; the deprivation of liberty imposed by imprisonment makes that penalty the best indicator of whether the legislature considered an offense to be petty or serious.

Jury § 17.3 — petty offenses

3. A criminal offense carrying a maximum prison term of 6 months or less is presumed to be petty, and thus not subject to the federal constitutional right to a jury trial, unless the legislature has authorized additional statutory penalties so severe as to indicate that the legislature considered the offense serious.

Jury § 17.3 — petty offenses — maximum authorized penalty

4. Where a legislature has made a judgment that an offense is petty—by virtue of the offense carrying a maximum prison term of 6 months or less—the United States Supreme Court will not look to the potential prison term faced by a particular defendant who is charged with more than one such petty offense when determining whether the defendant has a federal constitutional right to a jury trial; it is the objective indication of the seriousness with which society regards the offense, as manifested by the maximum authorized penalty, not the peculiarities of an individual case, that is used to determine whether a jury trial is required. (Kennedy, Breyer, Stevens, and Ginsburg, JJ., dissented from this holding.)

RESEARCH REFERENCES

21A Am Jur 2d, Criminal Law §§ 674, 892

9 Federal Procedure, L Ed, Criminal Procedure § 22:1267

USCS, Constitution, Amendment 6

L Ed Digest, Jury § 17.3

L Ed Index, Jury and Jury Trial

ALR Index, Jury and Jury Trial

Annotations:

Distinction between "petty" and "serious" offenses for purposes of federal constitutional right to trial by jury—Supreme Court cases. 103 L Ed 2d 1000.

Right to jury trial under Federal Constitution where two or more petty offenses, each having penalty of less than 6 months' imprisonment, have potential aggregate penalty in excess of 6 months when tried together. 26 ALR Fed 736.

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

APPEARANCES OF COUNSEL ARGUING CASE

Steven M. Statsinger argued the cause for petitioner.
Cornelia T. L. Pillard argued the cause for respondent.

SYLLABUS BY REPORTER OF DECISIONS

Petitioner was charged with two counts of obstructing the mail, each charge carrying a maximum authorized prison sentence of six months. He requested a jury, but the magistrate judge ordered a bench trial, explaining that because she would not sentence him to more than six months' imprisonment, he was not entitled to a jury trial. The District Court affirmed. In affirming, the Court of Appeals noted that the Sixth Amendment jury-trial right pertains only to those offenses for which the legislature has authorized a maximum penalty of over six months' imprisonment, and that because each offense charged here was petty in character, the fact that petitioner was facing more than six months' imprisonment in the aggregate did not entitle him to a jury trial. The court explained in dictum that because the offense's characterization as petty or serious determined the right to a jury trial, not the sentence faced, a trial judge's self-imposed limitation on sentencing could not deprive a defendant of that right.

Held:

1. A defendant who is prosecuted in a single proceeding for multiple petty offenses does not have a Sixth Amendment right to a jury trial where the aggregate prison term authorized for the offenses exceeds six months. The right to a jury trial is reserved for defendants accused of serious offenses and does not extend to petty offenses. *Duncan* v *Louisiana,* 391 US 145, 159, 20 L Ed 2d 491, 88 S Ct 1444. The most relevant criterion with which to assess the seriousness of an offense is the legislature's judgment of the offense's character, primarily as expressed in the maximum authorized prison term. An offense carrying a maximum term of six months or less is presumed petty, unless the legislature has authorized additional statutory penalties so severe as to indicate that it considered the offense serious. *E.g., Blanton* v *North Las Vegas,* 489 US 538, 543, 103 L Ed 2d 550, 109 S Ct 1289. Here, by setting the maximum prison term at six months, Congress categorized the offense of obstructing the mail as petty. The fact that petitioner was charged with two counts of a petty offense, and therefore faced an aggregate potential prison term greater than six months, does not change Congress' judgment of the particular offense's gravity, nor does it transform the petty offense into a serious one, to which the jury-trial right would apply. *Codispoti* v *Pennsylvania,* 418 US 506, 511, 41 L Ed 2d 912, 94 S Ct 2687, and *Taylor* v *Hayes,* 418 US 488, 41 L Ed 2d 897, 94 S Ct 2697, distinguished.

2. Because petitioner is not entitled to a jury trial, the Court does not reach the question whether a judge's self-imposed limitation on sentencing may affect the jury-trial right.

65 F. 3d 252, affirmed.

O'Connor, J., delivered the opinion of the Court, in which Rehnquist, C. J., and Scalia, Souter, and Thomas, JJ., joined. Kennedy, J., filed an

opinion concurring in the judgment, in which Breyer, J., joined. Stevens, J., filed a dissenting opinion, in which Ginsburg, J., joined.

OPINION OF THE COURT

Justice **O'Connor** delivered the opinion of the Court.

[1a] This case presents the question whether a defendant who is prosecuted in a single proceeding for multiple petty offenses has a constitutional right to a jury trial where the aggregate prison term authorized for the offenses exceeds six months. We are also asked to decide whether a defendant who would otherwise have a constitutional right to a jury trial may be denied that right because the presiding judge has made a pretrial commitment that the aggregate sentence imposed will not exceed six months.

We conclude that no jury-trial right exists where a defendant is prosecuted for multiple petty offenses. The Sixth Amendment's guarantee of the right to a jury trial does not extend to petty offenses, and its scope does not change where a defendant faces a potential aggregate prison term in excess of six months for petty offenses charged. Because we decide that no jury-trial right exists where a defendant is charged with multiple petty offenses, we do not reach the second question.

I

Petitioner Ray Lewis was a mail handler for the United States Postal Service. One day, postal inspectors saw him open several pieces of mail and pocket the contents. The next day, the inspectors routed "test" mail, containing marked currency, through petitioner's station. After seeing petitioner open the mail and remove the currency, the inspectors arrested him. Petitioner was charged with two counts of obstructing the mail, in violation of 18 USC § 1701 [18 USCS § 1701]. Each count carried a maximum authorized prison sentence of six months. Petitioner requested a jury, but the magistrate judge granted the Government's motion for a bench trial. She explained that because she would not, under any circumstances, sentence petitioner to more than six months' imprisonment, he was not entitled to a jury trial.

Petitioner sought review of the denial of a jury trial, and the District Court affirmed. Petitioner appealed, and the Court of Appeals for the Second Circuit affirmed. 65 F. 3d 252 (1995). The court noted that the Sixth Amendment jury-trial right pertains only to serious offenses, that is, those for which the legislature has authorized a maximum penalty of over six months' imprisonment. The court then addressed the question whether a defendant facing more than six months' imprisonment in the aggregate for multiple petty offenses is nevertheless entitled to a jury trial. The Court of Appeals concluded that, for determination of the right to a jury trial, the proper focus is on the legislature's determination regarding the character of the offense, as indicated by maximum penalty authorized, not on the length of the maximum aggregate sentence faced. *Id.*, at 254-255. Because each offense charged here was petty in character, the court concluded that petitioner was not entitled to a jury trial.

The court explained in dictum that

because the character of the offense as petty or serious determined the right to a jury trial, not the sentence faced, a trial judge's self-imposed limitation on sentencing could not deprive a defendant of the right to a jury trial. *Id.*, at 255-256.

We granted certiorari, 516 US ——, 133 L Ed 2d 753, 116 S Ct —— (1996), to resolve a conflict in the Courts of Appeals over whether a defendant prosecuted in a single proceeding for multiple petty offenses has a constitutional right to a jury trial, where the aggregate sentence authorized for the offenses exceeds six months' imprisonment, and whether such jury-trial right can be eliminated by a judge's pretrial commitment that the aggregate sentence imposed will not exceed six months. *See United States* v *Coppins*, 953 F. 2d 86 (CA4 1991); *United States* v *Bencheck*, 926 F. 2d 1512 (CA10 1991); *Rife* v *Godbehere*, 814 F. 2d 563 (CA9 1987).

II

The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . ." It is well-established that the Sixth Amendment, like the common law, reserves this jury-trial right for prosecutions of serious offenses, and that "there is a category of petty crimes or offenses which is not subject to the Sixth Amendment jury trial provision." *Duncan* v *Louisiana*, 391 US 145, 159, 20 L Ed 2d 491, 88 S Ct 1444 (1968).

[2, 3] To determine whether an offense is properly characterized as "petty," courts at one time looked to the nature of the offense and whether it was triable by a jury at common law. Such determinations became difficult, because many statutory offenses lack common-law antecedents. *Blanton* v *North Las Vegas*, 489 US 538, 541, and n. 5, 103 L Ed 2d 550, 109 S Ct 1289 (1989). Therefore, more recently, we have instead sought "objective indications of the seriousness with which society regards the offense." *Frank* v *United States*, 395 US 147, 148, 23 L Ed 2d 162, 89 S Ct 1503 (1969); accord, *District of Columbia* v *Clawans*, 300 US 617, 628, 81 L Ed 843, 57 S Ct 660 (1937). Now, to determine whether an offense is petty, we consider the maximum penalty attached to the offense. This criterion is considered the most relevant with which to assess the character of an offense, because it reveals the legislature's judgment about the offense's severity. "The judiciary should not substitute its judgment as to seriousness for that of a legislature, which is far better equipped to perform the task . . . ." *Blanton*, 489 US, at 541, 103 L Ed 2d 550, 109 S Ct 1289 (internal quotation marks omitted). In evaluating the seriousness of the offense, we place primary emphasis on the maximum prison term authorized. While penalties such as probation or a fine may infringe on a defendant's freedom, the deprivation of liberty imposed by imprisonment makes that penalty the best indicator of whether the legislature considered an offense to be "petty" or "serious." *Id.*, at 542, 103 L Ed 2d 550, 109 S Ct 1289. An offense carrying a maximum prison term of six months or less is presumed petty, unless the legislature has authorized additional statutory penalties so severe as to indicate that the legislature considered the

offense serious. *Id.*, at 543, 103 L Ed 2d 550, 109 S Ct 1289; *Codispoti* v *Pennsylvania*, 418 US 506, 512, 41 L Ed 2d 912, 94 S Ct 2687 (1974).

Here, the maximum authorized penalty for obstruction of mail is six months' imprisonment—a penalty that presumptively places the offense in the "petty" category. We face the question whether petitioner is nevertheless entitled to a jury trial, because he was tried in a single proceeding for two counts of the petty offense so that the potential aggregated penalty is 12 months' imprisonment.

Petitioner argues that, where a defendant is charged with multiple petty offenses in a single prosecution, the Sixth Amendment requires that the aggregate potential penalty be the basis for determining whether a jury trial is required. Although each offense charged here was petty, petitioner faced a potential penalty of more than six months' imprisonment; and, of course, if any offense charged had authorized more than six months' imprisonment, he would have been entitled to a jury trial. The Court must look to the aggregate potential prison term to determine the existence of the jury-trial right, petitioner contends, not to the "petty" character of the offenses charged.

[1b] We disagree. The Sixth Amendment reserves the jury-trial right to defendants accused of serious crimes. As set forth above, we determine whether an offense is serious by looking to the judgment of the legislature, primarily as expressed in the maximum authorized term of imprisonment. Here, by setting the maximum authorized prison term at six months, the legislature categorized the offense of obstructing the mail as petty. The fact that the petitioner was charged with two counts of a petty offense does not revise the legislative judgment as to the gravity of that particular offense, nor does it transform the petty offense into a serious one, to which the jury-trial right would apply. We note there is precedent at common law that a jury trial was not provided to a defendant charged with multiple petty offenses. See, *e.g., Queen* v *Matthews,* 10 Mod. 26, 88 Eng. Rep. 609 (Q. B. 1712); *King* v *Swallow,* 8 T.R. 285, 101 Eng. Rep. 1392 (K. B. 1799).

[4] Petitioner nevertheless insists that a defendant is entitled to a jury trial whenever he faces a deprivation of liberty for a period exceeding six months, a proposition for which he cites our precedent establishing the six-months' prison sentence as the presumptive cut-off for determining whether an offense is "petty" or "serious." To be sure, in the cases in which we sought to determine the line between "petty" and "serious" for Sixth Amendment purposes, we considered the severity of the authorized deprivation of liberty as an indicator of the legislature's appraisal of the offense. See *Blanton, supra,* at 542-543, 103 L Ed 2d 550, 109 S Ct 1289; *Baldwin* v *New York*, 399 US 66, 68-69, 26 L Ed 2d 437, 90 S Ct 1886 (1970) (plurality). But it is now settled that a legislature's determination that an offense carries a maximum prison terms of six months or less indicates its view that an offense is "petty." *Blanton, supra,* at 543, 103 L Ed 2d 550, 109 S Ct 1289. Where we have a judgment by the legislature that an *offense* is "petty," we do not look to the potential prison term faced by a *particular defendant* who is charged with more than one such petty offense. The

maximum authorized penalty provides an "objective indicatio[n] of the seriousness with which society regards the offense," *Frank*, 395 US, at 148, 23 L Ed 2d 162, 89 S Ct 1503, and it is that indication that is used to determine whether a jury trial is required, not the particularities of an individual case. Here, the penalty authorized by Congress manifests its judgment that the offense is petty, and the term of imprisonment faced by petitioner by virtue of the second count does not alter that fact.

[1c] Petitioner directs our attention to *Codispoti* for support for the assertion that the "aggregation of multiple petty offenses renders a prosecution serious for jury trial purposes." Brief for Petitioner 18. *Codispoti* is inapposite. There, defendants were each convicted at a single, nonjury trial for several charges of criminal contempt. The Court was unable to determine the legislature's judgment of the character of that offense, however, because the legislature had not set a specific penalty for criminal contempt. In such a situation, where the legislature has not specified a maximum penalty, courts use the severity of the penalty actually imposed as the measure of the character of the particular offense. *Codispoti, supra,* at 511, 41 L Ed 2d 912, 94 S Ct 2687; *Frank*, 395 US, at 149, 23 L Ed 2d 162, 89 S Ct 1503. Here, in contrast, we need not look to the punishment actually imposed, because we are able to discern Congress' judgment of the character of the offense.

Furthermore, *Codispoti* emphasized the special concerns raised by the criminal contempt context. Contempt "often strikes at the most vulnerable and human qualities of a judge's temperament. Even where the contempt is not a direct insult to the court . . . it frequently represents a rejection of judicial authority, or an interference with the judicial process . . . ." *Codispoti, supra*, at 516, 41 L Ed 2d 912, 94 S Ct 2687 (internal quotation marks omitted); see also *Mayberry* v *Pennsylvania*, 400 US 455, 465-466, 27 L Ed 2d 532, 91 S Ct 499 (1971). In the face of courtroom disruption, a judge may have difficulty maintaining the detachment necessary for fair adjudication; at the same time, it is a judge who "determines which and how many acts of contempt the citation will cover," "determine[s] guilt or innocence absent a jury," and "impose[s] the sentence." *Codispoti*, 418 US, at 515, 41 L Ed 2d 912, 94 S Ct 2687. Therefore, *Codispoti* concluded that the concentration of power in the judge in the often heated contempt context presented the "very likelihood of arbitrary action that the requirement of jury trial was intended to avoid or alleviate." *Id.*, at 515, 41 L Ed 2d 912, 94 S Ct 2687. The benefit of a jury trial, "'as a protection against the arbitrary exercise of official power,'" was deemed particularly important in that context. *Id.*, at 516, 41 L Ed 2d 912, 94 S Ct 2687 (quoting *Bloom* v *Illinois*, 391 US 194, 202, 20 L Ed 2d 522, 88 S Ct 1477 (1968)).

The absence of a legislative judgment about the offense's seriousness, coupled with the unique concerns presented in a criminal contempt case, persuaded us in *Codispoti* that, in those circumstances, the jury-trial right should be determined by the aggregate penalties actually imposed. Codispoti was held to be entitled to a jury trial, because the sentence actually imposed on him for criminal contempt exceeded six

months. By comparison, in *Taylor* v *Hayes,* 418 US 488, 41 L Ed 2d 897, 94 S Ct 2697 (1974), which similarly involved a defendant convicted of criminal contempt in a jurisdiction where the legislature had not specified a penalty, we determined that the defendant was not entitled to a jury trial, because the sentence actually imposed for criminal contempt did not exceed six months. Contrary to Justice Kennedy's argument, see *post* at ——–——, ——, 135 L Ed 2d, at 599–600, 602, *Codispoti* and *Taylor* do not stand for the sweeping proposition that, outside their narrow context, the jury-trial right is determined by the aggregate penalties faced by a defendant.

Certainly the aggregate potential penalty faced by petitioner is of serious importance to him. But to determine whether an offense is serious for Sixth Amendment purposes, we look to the legislature's judgment, as evidenced by the maximum penalty authorized. Where the offenses charged are petty, and the deprivation of liberty exceeds six months only as a result of the aggregation of charges, the jury-trial right does not apply. As petitioner acknowledges, even if he were to prevail, the Government could properly circumvent the jury-trial right by charging the counts in separate informations and trying them separately.

The Constitution's guarantee of the right to a jury trial extends only to serious offenses, and petitioner was not charged with a serious offense. That he was tried for two counts of a petty offense, and therefore faced an aggregate potential term of imprisonment of more than six months, does not change the fact that the legislature deemed this offense petty. Petitioner is not entitled to a jury trial.

Because petitioner is not entitled to a jury trial, we need not reach the question whether a judge's self-imposed limitation on sentencing may affect the jury-trial right.

The judgment of the Court of Appeals for the Second Circuit is affirmed.

It is so ordered.

SEPARATE OPINIONS

Justice **Kennedy**, with whom Justice **Breyer** joins, concurring in the judgment.

This petitioner had no constitutional right to a jury trial because from the outset it was settled that he could be sentenced to no more than six months' imprisonment for his combined petty offenses. The particular outcome, however, should not obscure the greater consequence of today's unfortunate decision. The Court holds that a criminal defendant may be convicted of innumerable offenses in one proceeding and sentenced to any number of years' imprisonment, all without benefit of a jury trial, so long as no one of the offenses considered alone is punishable by more than six months in prison. The holding both in its doctrinal formulation and in its practical effect is one of the most serious incursions on the right to jury trial in the Court's history, and it cannot be squared with our precedents. The Sixth Amendment guarantees a jury trial to a defendant charged with a serious crime. *Duncan* v *Louisiana,* 391 US 145, 159, 20 L Ed 2d 491, 88 S Ct 1444 (1968). Serious crimes, for purposes of the Sixth Amendment,

are defined to include any offense which carries a maximum penalty of more than six months in prison; the right to jury trial attaches to those crimes regardless of the sentence in fact imposed. *Id.,* at 159-160, 20 L Ed 2d 491, 88 S Ct 1444. This doctrine is not questioned here; but it does not define the outer limits of the right to trial by jury. Our cases establish a further proposition: The right to jury trial extends as well to a defendant who is sentenced in one proceeding to more than six months' imprisonment. *Codispoti* v *Pennsylvania,* 418 US 506, 41 L Ed 2d 912, 94 S Ct 2687 (1974); *Taylor* v *Hayes,* 418 US 488, 41 L Ed 2d 897, 94 S Ct 2697 (1974). To be more specific, a defendant is entitled to a jury if tried in a single proceeding for more than one petty offense when the combined sentences will exceed six months' imprisonment; taken together, the crimes then are considered serious for constitutional purposes, even if each is petty by itself, *Codispoti* v *Pennsylvania, supra,* at 517, 41 L Ed 2d 912, 94 S Ct 2687.

The defendants in *Codispoti* and *Taylor* had been convicted of criminal contempt without juries in States where the legislatures had not set a maximum penalty for the crime. Taylor was convicted of nine separate contempts and sentenced to six months in prison. The Court held he was not entitled to a jury trial. Since the total sentence was only six months' imprisonment, the "eight contempts, whether considered singly or collectively, thus constituted petty offenses, and trial by jury was not required." *Taylor* v *Hayes, supra,* at 496, 41 L Ed 2d 897, 94 S Ct 2697. Codispoti, by contrast, was convicted of seven contempts, and he was sentenced to six terms of six months' imprisonment and one term of three months' imprisonment, each to run consecutively—a total of 39 months. We held he was entitled to a trial by jury because his aggregate sentence exceeded six months. In *Codispoti,* Pennsylvania made the same argument the United States makes today. It said no jury trial is required if the maximum punishment for each offense does not exceed six months in prison. We rejected the claim, saying:

> "Here the contempts ... were tried seriatim in one proceeding, and the trial judge not only imposed a separate sentence for each contempt but also determined that the individual sentences were to run consecutively rather than concurrently, a ruling which necessarily extended the prison term to be served beyond that allowable for a petty criminal offense. As a result of this single proceeding, Codispoti was sentenced to three years and three months for his seven contemptuous acts. ... In terms of the sentence imposed, which was obviously several times more than six months, [Codispoti] was tried for what was equivalent to a serious offense and was entitled to a jury trial.
>
> "We find unavailing respondent's contrary argument that [Codispoti's] contempts were separate offenses and that, because no more than a six months' sentence was imposed for any single offense, each contempt was necessarily a petty offense triable without a jury. Notwithstanding respondent's characterization of the proceeding, the salient fact remains that the contempts arose from a single trial, were charged by a single judge, and were tried in a

single proceeding. The individual sentences imposed were then aggregated, one sentence taking account of the others and not beginning until the immediately preceding sentence had expired." *Codispoti* v *Pennsylvania, supra,* at 516-517, 41 L Ed 2d 912, 94 S Ct 2687.

The reasons the Court offers to distinguish these cases are not convincing. The Court first suggests *Codispoti*'s holding turned on the absence of a statutory maximum sentence for criminal contempt. *Ante,* at ——, 135 L Ed 2d, at 596–597. The absence of a statutory maximum sentence, however, has nothing whatever to do with whether a court must aggregate the penalties that are in fact imposed for each crime. Indeed, we know the open-ended penalty to which Codispoti was subject was not the reason he was entitled a jury trial because *Taylor,* decided the same day, held that a defendant who was subject to the same kind of open-ended sentencing was not entitled to trial by jury because the sentence he received did not in fact exceed six months. Taken together, *Codispoti* and *Taylor* stand for the proposition the Court now rejects: Sentences for petty offenses must be aggregated in determining whether a defendant is entitled to a jury trial. Cf. *State* v *McCarroll,* 337 So. 2d 475, 480 (La. 1976) (concluding *Codispoti* compelled it to overrule *Monroe* v *Wilhite,* 233 So. 2d 535 (La.), cert. denied, 400 US 910, 27 L Ed 2d 150, 91 S Ct 136 (1970), which had held the Sixth Amendment did not require aggregation of penalties for petty offenses to determine whether a defendant is entitled to a jury trial).

The Court next suggests *Codispoti's* holding was based on "the special concerns raised by the criminal contempt context." Ante, at ——, 135 L Ed 2d, at 597. The *Codispoti* Court was indeed cognizant of the need "to maintain order in the courtroom and the integrity of the trial process," 418 US, at 513, 41 L Ed 2d 912, 94 S Ct 2687, and so approved summary conviction and sentencing for criminal contempt, "where the necessity of circumstances warrants," *id.*, at 514, 41 L Ed 2d 912, 94 S Ct 2687. The Court made clear that under those circumstances, a judge may sentence a defendant to more than six months' imprisonment for more than one contempt without empaneling a jury. *Id.*, at 514-515, 41 L Ed 2d 912, 94 S Ct 2687. The Court went on to hold, however, that when the judge postpones the contempt trial until after the immediate proceedings have concluded, the "ordinary rudiments of due process" apply. *Id.*, at 515, 41 L Ed 2d 912, 94 S Ct 2687. The "ordinary" rule required aggregation of penalties, and because Codispoti's aggregated penalties exceeded six months' imprisonment, entitled him to a jury trial.

In authorizing retroactive consideration of the punishment a defendant receives, the holdings of *Codispoti* and *Taylor* must not be confused with the line of cases entitling a defendant to a jury trial if he is charged with a crime punishable by more than six months' imprisonment, regardless of the sentence he in fact receives. The two lines of cases are consistent. Crimes punishable by sentences of more than six months are deemed by the community's social and ethical judgments to be serious. See *District of Columbia* v *Clawans,* 300 US 617, 628, 81 L Ed 843, 57 S Ct 660 (1937). Opprobrium

attaches to conviction of those crimes regardless of the length of the actual sentence imposed, and the stigma itself is enough to entitle the defendant to a jury. See J. Proffatt, Trial by Jury 149 (1877) (jury trial cannot be denied to a defendant subject to "punishment which would render him infamous . . . [or] affix to him the ignominy of a criminal"). This rationale does not entitle a defendant to trial by jury if he is charged only with petty offenses; even if they could result in a long sentence when taken together, convictions for petty offenses do not carry the same stigma as convictions for serious crimes.

The imposition of stigma, however, is not the only or even the primary consequence a jury trial serves to constrain. As *Codispoti* recognizes, and as ought to be evident, the Sixth Amendment also serves the different and more practical purpose of preventing a court from effecting a most serious deprivation of liberty—ordering a defendant to prison for a substantial period of time—without the Government's persuading a jury he belongs there. A deprivation of liberty so significant may be exacted if a defendant faces punishment for a series of crimes, each of which can be punished by no more than six months' imprisonment. The stakes for a defendant may then amount in the aggregate to many years in prison, in which case he must be entitled to interpose a jury between himself and the Government. If the trial court rules at the outset that no more than six months' imprisonment will be imposed for the combined petty offenses, however, the liberty the jury serves to protect will not be endangered, and there is no corresponding right to jury trial.

Although *Codispoti* and *Taylor* are binding precedents, my conclusion rests also on a more fundamental point, one the Court refuses to confront: The primary purpose of the jury in our legal system is to stand between the accused and the powers of the State. Among the most ominous of those is the power to imprison. Blackstone expressed this principle when he described the right to trial by jury as a "strong . . . barrier . . . between the liberties of the people and the prerogative of the crown." 4 W. Blackstone, Commentaries *349-*350. See also W. Forsyth, History of Trial by Jury 426 (1852) ("[I]t would be difficult to conceive a better security than this right affords against any exercise of arbitrary violence on the part of the crown or a government acting in the name of the crown. No matter how ardent may be its wish to destroy or crush an obnoxious opponent, there can be no real danger from its menaces or acts so long as the party attacked can take refuge in a jury fairly and indifferently chosen"). In more recent times we have said the right to jury trial "reflect[s] a profound judgment about the way in which law should be enforced and justice administered." *Duncan* v *Louisiana,* 391 US, at 155, 20 L Ed 2d 491, 88 S Ct 1444. Providing a defendant with the right to be tried by a jury gives "him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge." *Id.*, at 156, 20 L Ed 2d 491, 88 S Ct 1444. These considerations all are present when a judge in a single case sends a defendant to prison for years, whether the sentence is the result of one serious offense or several petty offenses.

On the Court's view of the case,

however, there is no limit to the length of the sentence a judge can impose on a defendant without entitling him to a jury, so long as the prosecutor carves up the charges into segments punishable by no more than six months apiece. Prosecutors have broad discretion in framing charges, see *Ball* v *United States,* 470 US 856, 859, 84 L Ed 2d 740, 105 S Ct 1668 (1985), for criminal conduct often does not arrange itself in neat categories. In many cases, a prosecutor can choose to charge a defendant with multiple petty offenses rather than a single serious offense, and so prevent him under today's holding from obtaining a trial by jury while still obtaining the same punishment. Cf. *People* v *Estevez,* 163 Misc. 2d 839, 847, 622 N. Y. S. 2d 870, 876 (Crim. Ct. 1995) ("The People cannot have it both ways. They cannot in good faith seek consolidation of several B misdemeanors, which have been reduced from Class A misdemeanors, and then after conviction of more than two offenses seek consecutive sentences which would expose the defendant to over six months' imprisonment while at the same time deny the defendant the right to jury trial").

The Court does not aid its position when it notes, with seeming approval, the Government's troubling suggestion that a committed prosecutor could evade the rule here proposed by bringing a series of prosecutions in separate proceedings, each for an offense punishable by no more than six months in prison. *Ante,* at ——, 135 L Ed 2d, at 598. Were a prosecutor to take so serious a view of a defendant's conduct as to justify the burden of separate prosecutions, I should think the case an urgent example of when a jury is most needed if the offenses are consolidated. And if a defendant is subject to repeated bench trials because of a prosecutor's scheme to confine him in jail for years without benefit of a jury trial, at least he will be provided certain safeguards as a result. The prosecution's witnesses, and its theory of the case, will be tested more than once; the defendant will have repeated opportunities to convince the judge, or more than one judge, on the merits; and quite apart from questions of included offenses, the Government may be barred by collateral estoppel if a fact is found in favor of the defendant and is dispositive in later trials, see *Ashe* v *Swenson,* 397 US 436, 25 L Ed 2d 469, 90 S Ct 1189 (1970). Finally, the prosecutor will have to justify, at least to the voters, this peculiar exercise of discretion. In short, if a prosecutor seeks to achieve a result forbidden in one trial by the expedient of pursuing many, the process itself will constrain the prosecutor and protect the defendant in important ways. The Court's holding, of course, makes it easier rather than more difficult for a government to evade the constraints of the Sixth Amendment when it seeks to lock up a defendant for a long time.

The significance of the Court's decision quite transcends the peculations of Ray Lewis, the petitioner here, who twice filched from the mails. The decision affects more than repeat violators of traffic laws, persons accused of public drunkenness, persons who persist in breaches of the peace, and the wide range of eccentrics capable of disturbing the quiet enjoyment of life by others. Just as alarming is the threat the Court's holding poses to millions of persons in agriculture, manufacturing, and trade who must comply with minute administrative regulations, many of them carrying a jail term of six months or less. Violations of these sorts of rules often involve repeated, discrete acts which can result in potential liability of years of imprisonment. See, *e.g.,* 16 USC § 707 [16 USCS § 707] (violation of migratory bird treaties, laws, and regulations); 29 USC § 216 [29 USCS § 216] (penalties under Fair Labor Standards Act); 36 CFR § 1.3 (1995) (violation of National Park Service regulations); *id.,* § 261.1b (violation of Forest Service prohibitions); *id.,* § 327.25 (violation of Army Corps of Engineers water resource development project regulations); 43 CFR § 8351.1-1(b) (1995) (violation of Bureau of Land management regulations under National Trails System Act of 1968). Still, under the Court's holding it makes no difference whether a defendant is sentenced to a year in prison or for that matter to 20 years: As long as no single violation charged is punishable by more than six months, the defendant has no right to a jury.

The petitioner errs in the opposite direction. He argues a defendant is entitled to a jury trial whenever the penalties for the crimes charged combine to exceed six months' imprisonment, even if the trial judge rules that no more than six months' imprisonment will be imposed. We rejected this position in *Taylor,* however, and rightly so. A defendant charged with multiple petty offenses does not face the societal disapprobation attaching to conviction of a serious crime, and, so long as the trial judge rules at the outset that no more than six months' imprisonment will be imposed, the defendant does not face a serious deprivation of liberty. A judge who so rules is not withdrawing from a defendant a constitutional right to which he is entitled, as petitioner claims; the defendant is not entitled to the right to begin with if there is no potential for more than six months' imprisonment. The judge's statement has no independent force but only clarifies what would have been the law in its absence. *Codispoti* holds that a judge cannot impose a sentence exceeding six months' imprisonment for multiple petty offenses without conducting a jury trial, regardless of whether the judge announces that fact from bench.

Amici in support of petitioner say it is inappropriate for judges to make these kinds of sentencing decisions before trial. The Court approved just this practice, however, in *Scott* v *Illinois,* 440 US 367, 59 L Ed 2d 383, 99 S Ct 1158 (1979), holding the Sixth Amendment does not require a judge to appoint counsel for a criminal defendant in a misdemeanor case if the judge will not sentence the defendant to any jail time. So too, Federal Rule of Criminal Procedure 58(a)(2) authorizes district courts not to apply the Federal Rules of Criminal Procedure in petty offense prosecutions for which no sentence of imprisonment will be imposed. The rules contemplate the determination being made before trial. Fed. Rule Crim. Proc. 58(a)(3).

Petitioner's proposal would impose an enormous burden on an already beleaguered criminal justice system by increasing to a dramatic extent the number of required jury trials. There are thousands of instances where minor offenses are tried before a judge, and we would err on the other side of sensible interpretation were we to hold that combining petty

offenses in a single proceeding mandates a jury trial even when all possibility for a sentence longer than six months has been foreclosed.

* * *

When a defendant's liberty is put at great risk in a trial, he is entitled to have the trial conducted to a jury. This principle lies at the heart of the Sixth Amendment. The Court does grave injury to the Amendment by allowing a defendant to suffer a prison term of any length after a single trial before a single judge and without the protection of a jury. I join only the Court's judgment.

Justice **Stevens**, with whom Justice **Ginsburg** joins, dissenting.

The Sixth Amendment provides that the accused is entitled to trial by an impartial jury "in all criminal prosecutions." As Justice Kennedy persuasively explains, the "primary purpose of the jury in our legal system is to stand between the accused and the powers of the State." *Ante*, at ——, 135 L Ed 2d, at 601. The majority, relying exclusively on cases in which the defendant was tried for a single offense, extends a rule designed with those cases in mind to the wholly dissimilar circumstance in which the prosecution concerns multiple offenses. I agree with Justice Kennedy to the extent he would hold that a prosecution which exposes the accused to a sentence of imprisonment longer than six months, whether for a single offense or for a series of offenses, is sufficiently serious to confer on the defendant the right to demand a jury. See *ante*, at ———, 135 L Ed 2d, at 601–603.

Unlike Justice Kennedy, however, I believe that the right to a jury trial attaches when the prosecution begins. I do not quarrel with the established view that only defendants whose alleged misconduct is deemed serious by the legislature are entitled to be judged by a jury. But in my opinion, the legislature's determination of the severity of the charges against a defendant is properly measured by the maximum sentence authorized for the prosecution as a whole. The text of the Sixth Amendment supports this interpretation by referring expressly to "criminal *prosecutions*."

Nothing in our prior precedents conflicts with this view. True, some of our past cases (the ones on which the majority relies) have referred to an "offense" rather than a "prosecution." See, *e.g.*, *Blanton* v *North Las Vegas*, 489 US 538, 541, 543, 103 L Ed 2d 550, 109 S Ct 1289 (1989); *Frank* v *United States*, 395 US 147, 148, 23 L Ed 2d 162, 89 S Ct 1503 (1969). But the words were effectively interchangeable in those cases because the prosecutions at issue concerned only one offense. The contempt cases, which do involve multiple offenses, demonstrate that aggregation—that is, deciding whether the defendant has a right to a jury trial on the basis of the prosecution rather than the individual offenses—is appropriate.

The majority attempts to distinguish *Codispoti* v *Pennsylvania*, 418 US 506, 41 L Ed 2d 912, 94 S Ct 2687 (1974), by suggesting that the Court's decision in that case turned on the absence of any statutory measure of severity. *Ante*, at ——, 135 L Ed 2d, at 597. That observation is certainly correct to a point: The contempt cases are special because the sentence actually imposed provides the only available yardstick by which to judge compliance with the command of the Sixth Amendment. But that unique aspect of the cases does not speak to the aggregation question. Having determined that the defendants in *Codispoti* were sentenced to no more than six months for any individual contempt, it would follow from the rule the Court announces today that a jury trial was unnecessary. Yet we reversed and remanded, holding that "each contemnor was tried for what was *equivalent* to a serious offense and was [therefore] entitled to a jury trial." 418 US, at 517, 41 L Ed 2d 912, 94 S Ct 2687 (emphasis added).*

Justice Kennedy reads a second contempt case, *Taylor* v *Hayes*, 418 US 488, 41 L Ed 2d 897, 94 S Ct 2697 (1974), as standing for the proposition that a judge may defeat the jury trial right by promising a short sentence. He is mistaken. The dispositive fact in *Taylor* was not that the prison term imposed was only six months but rather that the actual sentence, acting as a proxy for the legislative judgment, demonstrated that "the State itself has determined that the contempt is not so serious as to warrant more than a six-month sentence." 418 US, at 496, 41 L Ed 2d 897, 94 S Ct 2697. In this case, by contrast, we have an explicit statutory expression of the legislative judgment that this prosecution is serious—the two offenses charged are punishable by a maximum prison sentence of 12 months.

All agree that a judge may not strip a defendant of the right to a jury trial for a serious crime by promising a sentence of six months or less. This is so because "[o]pprobrium attaches to conviction of those crimes regardless of the length of the actual sentence imposed," *ante*, at ——, 135 L Ed 2d, at 600–601 (Kennedy, J., concurring in judgment). In my view, the same rule must apply to prosecutions involving multiple offenses which are serious by virtue of their aggregate possible sentence. I see no basis for assuming that the dishonor associated with multiple convictions for petty offenses is less than the dishonor associated with conviction of a single serious crime. Because the right attaches at the moment of prosecution, a judge may not deprive a defendant of a jury trial by making a pretrial determination that the crimes charged will not warrant a sentence exceeding six months.

Petitioner is entitled to a jury trial because he was charged with offenses carrying a statutory maximum prison sentence of more than six months. I therefore would reverse the judgment of the Court of Appeals and, for that reason, I respectfully dissent.

* The majority's speculation that the Court's holding in *Codispoti* was limited to criminal contempt cases, *ante*, at ———, 135 L Ed 2d, at 597–598, is persuasively answered by Justice Kennedy. See *ante*, at ——, 135 L Ed 2d, at 600 (opinion concurring in judgment).

BLANTON ET AL. v. CITY OF NORTH LAS VEGAS, NEVADA

CERTIORARI TO THE SUPREME COURT OF NEVADA

No. 87-1437. Argued January 9, 1989—Decided March 6, 1989

Under Nevada law, a first-time offender convicted of driving under the influence of alcohol (DUI) faces up to six months of incarceration or, in the alternative, 48 hours of community work while identifiably dressed as a DUI offender. In addition, the offender must pay a fine of up to $1,000, attend an alcohol abuse education course, and lose his license for 90 days. Penalties increase for repeat offenders. Petitioners, first-time offenders, were charged with DUI in separate incidents. The Municipal Court denied each petitioner's demand for a jury trial. On appeal, the Judicial District Court again denied petitioner Blanton's request but granted petitioner Fraley's. The Nevada Supreme Court remanded both cases, concluding that the Federal Constitution does not guarantee a right to a jury trial for a DUI offense.

Held: There is no Sixth Amendment right to a trial by jury for persons charged under Nevada law with DUI. This Court has long held that petty crimes or offenses are not subject to the Sixth Amendment jury trial provision. The most relevant criterion for determining the seriousness of an offense is the severity of the maximum authorized penalty fixed by the legislature. Under this approach, when an offense carries a maximum prison term of six months or less, as DUI does under Nevada law, it is presumed to be petty unless the defendant can show that any additional statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense is a "serious" one. Under this test, it is clear that the Nevada Legislature does not view DUI as a serious offense. It is immaterial that a first-time DUI offender may face a minimum prison term or that some offenders may receive the maximum prison sentence, because even the maximum prison term does not exceed the constitutional demarcation point of six months. Likewise, the 90-day license suspension is irrelevant if it runs concurrently with the prison term. The 48 hours of community service in the specified clothing, while a source of embarrassment, is less embarrassing and less onerous than six months in jail. Also, the $1,000 fine is well below the $5,000 level set by Congress in its most recent definition of a petty offense, while increased penalties for recidivists are commonplace and are not faced by petitioners. Pp. 541–545.

103 Nev. 623, 748 P. 2d 494, affirmed.

MARSHALL, J., delivered the opinion for a unanimous Court.

John J. Graves, Jr., argued the cause for petitioners. With him on the briefs was *John G. Watkins*.

Mark L. Zalaoras argued the cause for respondent. With him on the brief was *Roy A. Woofter*.*

JUSTICE MARSHALL delivered the opinion of the Court.

The issue in this case is whether there is a constitutional right to a trial by jury for persons charged under Nevada law with driving under the influence of alcohol (DUI). Nev. Rev. Stat. § 484.379(1) (1987). We hold that there is not.

DUI is punishable by a minimum term of two days' imprisonment and a maximum term of six months' imprisonment. § 484.3792(1)(a)(2). Alternatively, a trial court may order the defendant "to perform 48 hours of work for the community while dressed in distinctive garb which identifies him as [a DUI offender]." *Ibid.* The defendant also must pay a fine ranging from $200 to $1,000. § 484.3792(1)(a)(3). In addition, the defendant automatically loses his driver's license for 90 days, § 483.460(1)(c),[1] and he must attend, at his own

**Dan C. Bowen* and *John A. Powell* filed a brief for the American Civil Liberties Union et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the United States by *Solicitor General Fried*, *Acting Assistant Attorney General Dennis*, *Deputy Solicitor General Bryson*, *Michael R. Lazerwitz*, and *Louis M. Fischer*; for the State of Nevada by *Brian McKay*, Attorney General, and *Brian Randall Hutchins*, Chief Deputy Attorney General; for the State of New Jersey by *W. Cary Edwards*, Attorney General, and *Boris Moczula*, *Larry R. Etzweiler*, and *Cherrie Madden Black*, Deputy Attorneys General; for the city of Las Vegas, Nevada, by *George F. Ogilvie*; and for the Louisiana District Attorneys Association by *Dorothy A. Pendergast*.

[1] A restricted license may be issued after 45 days which permits the defendant to travel to and from work, to obtain food and medicine, and to receive regularly scheduled medical care. § 483.490(2).

expense, an alcohol abuse education course. § 484.3792(1)(a)(1). Repeat DUI offenders are subject to increased penalties.[2]

Petitioners Melvin R. Blanton and Mark D. Fraley were charged with DUI in separate incidents. Neither petitioner had a prior DUI conviction. The North Las Vegas, Nevada, Municipal Court denied their respective pretrial demands for a jury trial. On appeal, the Eighth Judicial District Court denied Blanton's request for a jury trial but, a month later, granted Fraley's. Blanton then appealed to the Supreme Court of Nevada, as did respondent city of North Las Vegas with respect to Fraley. After consolidating the two cases along with several others raising the same issue, the Supreme Court concluded, *inter alia*, that the Federal Constitution does not guarantee a right to a jury trial for a DUI offense because the maximum term of incarceration is only six months and the maximum possible fine is $1,000. 103 Nev. 623, 748 P. 2d 494 (1987).[3] We granted certiorari to consider whether petitioners were entitled to a jury trial, 487 U. S. 1203 (1988), and now affirm.

[2] A second DUI offense is punishable by 10 days to six months in prison. § 484.3792(1)(b). The second-time offender also must pay a fine ranging from $500 to $1,000, *ibid.*, and he loses his driver's license for one year. § 483.460(1)(b)(5). A third DUI offense is punishable by a minimum term of one year's imprisonment and a maximum term of six years' imprisonment. § 484.3792(1)(c). The third-time offender also must pay from $2,000 to $5,000, *ibid.*, and he loses his driving privileges for three years. § 483.460(1)(a)(2).

A prosecutor may not dismiss a DUI charge "in exchange for a plea of guilty or nolo contendere to a lesser charge or for any other reason unless he knows or it is obvious" that there is insufficient evidence to prove the offense. § 484.3792(3). Trial courts may not suspend sentences or impose probation for DUI convictions. *Ibid.*

[3] Accordingly, the Supreme Court of Nevada remanded Blanton's case with instructions to proceed without a jury trial. Because Fraley pleaded guilty to DUI before he took an appeal to the District Court, the Supreme Court remanded his case with instructions to reinstate his conviction.

It has long been settled that "there is a category of petty crimes or offenses which is not subject to the Sixth Amendment jury trial provision." *Duncan* v. *Louisiana*, 391 U. S. 145, 159 (1968); see also *District of Columbia* v. *Clawans*, 300 U. S. 617, 624 (1937); *Callan* v. *Wilson*, 127 U. S. 540, 557 (1888).[4] In determining whether a particular offense should be categorized as "petty," our early decisions focused on the nature of the offense and on whether it was triable by a jury at common law. See, *e. g.*, *District of Columbia* v. *Colts*, 282 U. S. 63, 73 (1930); *Callan*, *supra*, at 555–557. In recent years, however, we have sought more "objective indications of the seriousness with which society regards the offense." *Frank* v. *United States*, 395 U. S. 147, 148 (1969).[5] "[W]e have found the most relevant such criteria in the severity of the maximum authorized penalty." *Baldwin* v. *New York*, 399 U. S. 66, 68 (1970) (plurality opinion); see also *Duncan*, *supra*, at 159. In fixing the maximum penalty for a crime, a legislature "include[s] within the definition of the crime itself a judgment about the seriousness of the offense." *Frank*, *supra*, at 149. The judiciary should not substitute its judgment as to seriousness for that of a legislature, which is "far better equipped to perform the task, and [is] likewise more responsive to changes in attitude and more amenable to the

[4] The Sixth Amendment right to a jury trial applies to the States through the Fourteenth Amendment. *Duncan* v. *Louisiana*, 391 U. S. 145 (1968).

[5] Our decision to move away from inquiries into such matters as the nature of the offense when determining a defendant's right to a jury trial was presaged in *District of Columbia* v. *Clawans*, 300 U. S. 617, 628 (1937), where we stated: "Doubts must be resolved, not subjectively by recourse of the judge to his own sympathy and emotions, but by objective standards such as may be observed in the laws and practices of the community taken as a gauge of its social and ethical judgments." Our adherence to a common-law approach has been undermined by the substantial number of statutory offenses lacking common-law antecedents. See *Landry* v. *Hoepfner*, 840 F. 2d 1201, 1209–1210 (CA5 1988) (en banc), cert. pending, No. 88–5043; *United States* v. *Woods*, 450 F. Supp. 1335, 1345 (Md. 1978); Brief for United States as *Amicus Curiae* 18.

recognition and correction of their misperceptions in this respect." *Landry* v. *Hoepfner*, 840 F. 2d 1201, 1209 (CA5 1988) (en banc), cert. pending, No. 88-5043.

In using the word "penalty," we do not refer solely to the maximum prison term authorized for a particular offense. A legislature's view of the seriousness of an offense also is reflected in the other penalties that it attaches to the offense. See *United States* v. *Jenkins*, 780 F. 2d 472, 474, and n. 3 (CA4), cert. denied, 476 U. S. 1161 (1986). We thus examine "whether the length of the authorized prison term *or the seriousness of other punishment* is enough in itself to require a jury trial." *Duncan, supra*, at 161 (emphasis added); see also *Frank*, 395 U. S., at 152 (three years' probation is not "onerous enough to make an otherwise petty offense 'serious'").[6] Primary emphasis, however, must be placed on the maximum authorized period of incarceration. Penalties such as probation or a fine may engender "a significant infringement of personal freedom," *id.*, at 151, but they cannot approximate in severity the loss of liberty that a prison term entails. Indeed, because incarceration is an "intrinsically different" form of punishment, *Muniz* v. *Hoffman*, 422 U. S. 454, 477 (1975), it is the most powerful indication of whether an offense is "serious."

Following this approach, our decision in *Baldwin* established that a defendant is entitled to a jury trial whenever the offense for which he is charged carries a maximum authorized prison term of greater than six months. 399 U. S., at 69; see *id.*, at 74–76 (Black, J., concurring in judgment). The possibility of a sentence exceeding six months, we determined, is "sufficiently severe by itself" to require the opportunity for a jury trial. *Id.*, at 69, n. 6. As for a prison term of six months or less, we recognized that it will seldom be viewed by the defendant as "trivial or 'petty.'" *Id.*, at 73. But we

[6] In criminal contempt prosecutions, "where no maximum penalty is authorized, the severity of the penalty actually imposed is the best indication of the seriousness of the particular offense." *Frank*, 395 U. S. at, 149.

found that the disadvantages of such a sentence, "onerous though they may be, may be outweighed by the benefits that result from speedy and inexpensive nonjury adjudications." *Ibid.*; see also *Duncan, supra*, at 160.

Although we did not hold in *Baldwin* that an offense carrying a maximum prison term of six months or less automatically qualifies as a "petty" offense,[7] and decline to do so today, we do find it appropriate to presume for purposes of the Sixth Amendment that society views such an offense as "petty." A defendant is entitled to a jury trial in such circumstances only if he can demonstrate that any additional statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense in question is a "serious" one. This standard, albeit somewhat imprecise, should ensure the availability of a jury trial in the rare situation where a legislature packs an offense it deems "serious" with onerous penalties that nonetheless "do not puncture the 6-month incarceration line." Brief for Petitioners 16.[8]

Applying these principles here, it is apparent that petitioners are not entitled to a jury trial. The maximum authorized prison sentence for first-time DUI offenders does not exceed six months. A presumption therefore exists that the Nevada Legislature views DUI as a "petty" offense for purposes

[7] We held "*only* that a potential sentence in excess of six months' imprisonment is sufficiently severe by itself to take the offense out of the category of 'petty.'" *Baldwin* v. *New York*, 399 U. S., at 69, n. 6 (plurality opinion) (emphasis added); see also *Codispoti* v. *Pennsylvania*, 418 U. S. 506, 512, n. 4 (1974).

[8] In performing this analysis, only penalties resulting from state action, *e. g.*, those mandated by statute or regulation, should be considered. See Note, The Federal Constitutional Right to Trial by Jury for the Offense of Driving While Intoxicated, 73 Minn. L. Rev. 122, 149–150 (1988) (nonstatutory consequences of a conviction "are speculative in nature, because courts cannot determine with any consistency when and if they will occur, especially in the context of society's continually shifting moral values").

of the Sixth Amendment. Considering the additional statutory penalties as well, we do not believe that the Nevada Legislature has clearly indicated that DUI is a "serious" offense.

In the first place, it is immaterial that a first-time DUI offender may face a minimum term of imprisonment. In settling on six months' imprisonment as the constitutional demarcation point, we have assumed that a defendant convicted of the offense in question would receive the *maximum* authorized prison sentence. It is not constitutionally determinative, therefore, that a particular defendant may be required to serve some amount of jail time *less* than six months. Likewise, it is of little moment that a defendant may receive the maximum prison term because of the prohibitions on plea bargaining and probation. As for the 90-day license suspension, it, too, will be irrelevant if it runs concurrently with the prison sentence, which we assume for present purposes to be the maximum of six months.[9]

We are also unpersuaded by the fact that, instead of a prison sentence, a DUI offender may be ordered to perform 48 hours of community service dressed in clothing identifying him as a DUI offender. Even assuming the outfit is the source of some embarrassment during the 48-hour period,[10] such a penalty will be less embarrassing and less onerous than six months in jail. As for the possible $1,000 fine, it is well below the $5,000 level set by Congress in its most recent definition of a "petty" offense, 18 U. S. C. § 1 (1982 ed.,

[9] It is unclear whether the license suspension and prison sentence in fact run concurrently. See Nev. Rev. Stat. § 483.460(1) (1987). But even if they do not, we cannot say that a 90-day license suspension is that significant as a Sixth Amendment matter, particularly when a restricted license may be obtained after only 45 days. Cf. *Frank* v. *United States*, *supra*. Furthermore, the requirement that an offender attend an alcohol abuse education course can only be described as *de minimis*.

[10] We are hampered in our review of the clothing requirement because the record from the state courts contains neither a description of the clothing nor any details as to where and when it must be worn.

Supp. IV), and petitioners do not suggest that this congressional figure is out of step with state practice for offenses carrying prison sentences of six months or less.[11] Finally, we ascribe little significance to the fact that a DUI offender faces increased penalties for repeat offenses. Recidivist penalties of the magnitude imposed for DUI are commonplace and, in any event, petitioners do not face such penalties here.[12]

Viewed together, the statutory penalties are not so severe that DUI must be deemed a "serious" offense for purposes of the Sixth Amendment. It was not error, therefore, to deny petitioners jury trials. Accordingly, the judgment of the Supreme Court of Nevada is

Affirmed.

[11] We have frequently looked to the federal classification scheme in determining when a jury trial must be provided. See, *e. g.*, *Muniz* v. *Hoffman*, 422 U. S. 454, 476–477 (1975); *Baldwin*, *supra*, at 71; *Duncan*, 391 U. S., at 161. Although Congress no longer characterizes offenses as "petty," 98 Stat. 2027, 2031, 99 Stat. 1728 (repealing 18 U. S. C. § 1), under the current scheme, 18 U. S. C. § 3559 (1982 ed., Supp. V), an individual facing a maximum prison sentence of six months or less remains subject to a maximum fine of no more than $5,000. 18 U. S. C. § 3571(b)(6) (1982 ed., Supp. V).

We decline petitioners' invitation to survey the statutory penalties for drunken driving in other States. The question is not whether other States consider drunken driving a "serious" offense, but whether Nevada does. Cf. *Martin* v. *Ohio*, 480 U. S. 228, 236 (1987). Although we looked to state practice in our past decisions, we did so chiefly to determine whether there was a nationwide consensus on the potential term of imprisonment or amount of fine that triggered a jury trial regardless of the particular offense involved. See, *e. g.*, *Baldwin*, *supra*, at 70–73; *Duncan*, *supra*, at 161.

[12] In light of petitioners' status as first-time offenders, we do not consider whether a repeat offender facing enhanced penalties may state a constitutional claim because of the absence of a jury trial in a prior DUI prosecution.

OFFICE OF THE DISTRICT ATTORNEY
CLARK COUNTY, NEVADA

STEWART L. BELL
District Attorney

J. CHARLES THOMPSON
Assistant District Attorney

MIKE DAVIDSON
Assistant District Attorney

MEMORANDUM

TO: DOUG MATTSON

FROM: BRUCE NELSON

DATE: February 9, 1999

SUBJECT: JURY TRIALS IN NEVADA

Dear Doug,

Referencing your request about Nevada's lack of jury trials for misdemeanor offenses, there is no specific statute on point. In State v. Smith, 99 Nev. 806, 672 P. 2d 631 (1983), the Nevada Supreme Court held that the right to trial by jury in Nevada is based on the common law. Because the common law recognized that a person was not entitled to trial by jury for a petty offense, the Smith court concluded that a defendant is not entitled to a jury trial unless he is charged with a serious offense i.e. one which carries a sentence of more than six months in jail. The Smith decision was reaffirmed in the Blanton decision. See also State v. Ruhe, 24 Nev. 251, 52 P. 274 (1898).

I hope this information is helpful to you. Please let me know whether your proposed statute is adopted.

Ramsey County, North Dakota
Office of States Attorney
Lonnie W. Olson
States Attorney

524 4th Ave. # 16

Telephone: 662-7077
Devils Lake, ND 58301

February 5, 1999

Representative Stacey L. Mickelson
ND House of Representatives
Bismarck, ND 58505

Dear Representative Mickelson:

It is my understanding that there is a bill pending before the North Dakota House of Representatives to inquire as to the State of North Dakota tracking the federal right to a jury trial in criminal cases. Pursuant to federal law, a person charged with a petty offense does not have the right to a jury trial, and the federal government has defined a petty offense as one in which a person may be incarcerated for six months or less. As you know, there are many offenses which are defined as Class B Misdemeanors which can clog up the court system quite effectively. The possibility of NSF charges, driving without liability insurance charges, driving under suspension charges, Game and Fish violations, or DUI charges, can effectively backlog a court system for a long period of time, which causes an extreme amount of cost to the state, not including the actual costs of keeping a higher number of judges in the court system.

Considering the fact that the United States Supreme Court has held that a petty offense is one in which a criminal defendant may not be incarcerated for more than six months, it would clearly be constitutional to provide for an amendment to the North Dakota Constitution to track the federal right to a jury trial, or even amend it to define a petty offense to be one in which a person may be incarcerated for more than 90 days.

I thank you very much for your consideration in this matter.

Sincerely,

Lonnie W. Olson
Ramsey County State's Attorney

LWO/cj

From: Glenn V. Dill/ISD/NoDak@Hub on 01/29/99 03:06 PM

To: Stacey L. Mickelson/NDLC/NoDak@NoDak

cc:

Subject: JURY TRIAL

REPRESENTATIVE MICKELSON:

DOUG MATTSON ASKED ME TO WRITE TO YOU WITH SOME FIGURES THAT MIGHT BE HELPFUL. EACH OF THE MISDEMEANOR CASES IN WHICH A NOT GUILTY PLEA IS ENTERED IN WARD COUNTY DISTRICT COURT IS SET FOR A PRE TRIAL CONFERENCE ON THE NEXT FOLLOWING FIRST WEDNESDAY OF THE MONTH.

WE HAVE 38 CASES SET FOR WEDNESDAY FEBRUARY 2. THIS IS AN AVERAGE NUMBER. WITH THE RETIREMENT OF JUDGE BERNING, WE HAVE THREE JUDGES LEFT IN THIS COURT HOUSE. I HANDLE ALL OF THE MISDEMEANOR TRIALS. JUDGES OLSON AND HOLUM SEEM TO KEEP BUSY WITH CIVIL TRIALS AND FELONIES.

WE SET ASIDE THURSDAY AND FRIDAY OF EACH WEEK TO TRY JURY CASES, USUALLY ALLOTING ONE DAY FOR EACH CASE. THAT GIVES US ABOUT 9 DAYS A MONTH TO DISPOSE OF JURY CASES OR 108 CASES.

THE JUDICIAL SYSTEM DOES NOT HAVE THE CAPACITY FOR ALL THE CASES TO GO TO TRIAL. WE DO NOT HAVE EITHER THE COURTROOM, THE JURY DELIBERATION ROOM, THE PARKING, OR THE PERSONNEL TO TRY THEM ALL. SO NEARLY ALL OF THEM ARE PLEA BARGAINED TO SOME LESSER CHARGE OR DISMISSED BEFORE TRIAL.

IF ALL THE CASES WENT TO TRIAL, 38 X 12 PRODUCES 456 WHICH TAKES CARE OF MY 108 DAYS AND 270 OF AN ADDITIONAL JUDGE. IF THESE MISDEMEANOR TRIALS DID NOT GO TO TRIAL BY JURY

THE POTENTIAL SAVINGS, IF THE STATE BEGAN TO ACTUALLY PROSECUTE PEOPLE IS AS FOLLOWS:

30 JURORS X $25 x 378 DAYS =	$283,500	
2 BAILIFFS X $25 X 378 DAYS =	18,900	
1 JUDGE	75,000	
1 COURT RECORDER	25,000	
1 COURT CLERK	20,000	
1 STATES ATTORNEY		35,000
	$457,400	

THE WARD COUNTY COMMISSIONERS RECENTLY DECIDED NOT TO MOVE THE CHILD SUPPORT ENFORCEMENT BACK TO THE COURTHOUSE BECAUSE THERE IS NOT ENOUGH PARKING. WHEN WE HAVE TWO JURIES HERE, THEY COMPETE WITH THE EMPLOYEES, THE HIGH SCHOOL STUDENTS, THE WESTLIE TOWERS AND ST JOSEPH'S VISITORS FOR PARKING. IT WOULD SEEM LIKELY THAT WARD COUNTY WOULD NEED TO ADD SOME PARKING AND OTHER FACILITIES.

WHEN I BEGAN PRACTICE HERE IN 1965, JURY TRIALS OF MISDEMEANORS WERE RARE. WE TRIED 5 DRIVING UNDER THE INFLUENCE OF ALCOHOL CASES TO THE JUDGE EVERY WEDNESDAY AFTERNOON.

IF THERE IS ANY OTHER INFORMATION THAT I CAN GIVE YOU, PLEASE LET ME KNOW

From: Richard J. Riha/ISD/NoDak@Hub on 02/11/99 03:23 PM

To: Stacey L. Mickelson/NDLC/NoDak@NoDak
cc:
Subject: HCR 3017

Dear Representative Mickelson:

I am writing to express the support of my office for HCR 3017. I am sorry that no one from my office was able to attend the committee hearing but all of us were either in court or preparing for trials at the time of the hearing.

I know that you have received information with respect to the amount of money that would be saved by eliminating jury trials in class B misdemeanor cases. I am also aware that you have been informed of the U.S. Supreme Court decisions with respect to the lack of a right to trial by jury in caes involving a maximum jail sentence of less than six months.

There are other factors which need to be considered was well. Over the past years, the legislature has moved toward making more violations of state law criminal in nature. Much of that legislation involves class B misdemeanor sanctions. And, as I understand it, NSF checks will once again be class B misdemeanors. Moreover, the legislature has also moved to reduce the number of judgeships in North Dakota.

The net effect of this is that with more and more class B misdemeanor offenses and fewer judges, the time between charging and resolution of a case is extended because a case is set on a track for a jury trial. Both the state and a criminal defendant have a right to have the criminal charge resolved expeditiously. Because of backlogs in the criminal justice system due to the setting of jury trials in class B misdemeanor cases, the right to a speedy resolution of these criminal charges is denied. The delays are over a year in some cases. This also serves to delay the resolution of more serious criminal cases as well as civil cases.

There may be an impression that a defendant in a class B misdemeanor case will be denied a trial should the legislature and voters approve this amendment. Obviously, that is not the case since a defendant would be entitled to a trial before a judge. Bench trials are placed on the calendar for trial much sooner than jury trials with a resolution of the case coming within approximately 60-90 days of the filing of the charge. Also, bench trials tend to be significantly shorter in length than jury trials. Therefore, having class B misdemeanor cases tried before a judge will allow for a large volume of cases to move through the system sooner and at a greatly reduced cost to the taxpayers. Justice will not be delayed and there will be no violation of a defendant's, or the state's, rights by requiring bench trials.

I hope that this aids your arguments in favor of HCR 3017. If there is anything that this office can do to help, please let us know.

Sincerely,

Richard J. Riha
Burleigh County State's Attorney

NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

1560 BROADWAY SUITE 700 DENVER, COLORADO 80202
303-830-2200 FAX: 303-863-8003
www.ncsl.org info@ncsl.org

From: Name: Jeanne Mejeur
Voice Phone:

To: Name: Representative Stacey L. Mickelson
Company:
Fax Number: 817013281997,,,12500

Date and time of transmission: Friday, January 29, 1999 1:30:02 PM
Number of pages including this cover sheet: 10

Attached please find a summary and copies of statutes from other states that have imposed limitations on the right to trial by jury, based on the penalty that may be imposed. Florida is the only state that has used the 6 month or less criteria. I hope this is helpful in support of your bill.

National Conference of State Legislatures

Limitations on Right to Trial by Jury

January, 1999

The following states have placed limitations on the right to a jury trial in criminal prosecutions, based on the severity of the penalty that may be imposed for conviction:

Connecticut	No right to a jury trial if the total "effective sentence" is less than 30 days.
California	No right to a jury trial if the charge is categorized as an infraction.
Florida	No right to a jury trial for crimes punishable by imprisonment of 6 months or less.
Illinois	No right to a jury trial for ordinances punishable only by fine.
Maryland	No right to a jury trial for crimes punishable by any imprisonment.
New Jersey	No right to a jury trial for crimes punishable by imprisonment of less than 1 year.
Ohio	No right to a jury trial where the potential fine does not exceed $100.

Source: 50-state searches on Westlaw statutory and court rules databases.

Practice Book 1998, s 1-20

WEST'S CONNECTICUT RULES OF COURT
RULES OF PRACTICE
RULES FOR THE SUPERIOR COURT
GENERAL PROVISIONS
CHAPTER 1. SCOPE OF RULES
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Current with amendments received through 10-1-1998

s 1-20. Criminal Contempt--Sentence if No Right to Jury Trial is Afforded

No person shall receive a total effective sentence of more than thirty days IMPRISONMENT or a fine in excess of ninety-nine dollars unless he or she has been afforded the right to a jury trial.

Practice Book 1998, s 1-20
CT R SUPER CT GEN s 1-20
END OF DOCUMENT

West's Ann.Cal.Penal Code s 19.6

WEST'S ANNOTATED CALIFORNIA CODES
PENAL CODE
PRELIMINARY PROVISIONS
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Current through End of 1997-98 Reg. Sess. and 1st Ex. Sess.

s 19.6. Infractions; punishment; jury trial; right to public defender

An infraction is not punishable by IMPRISONMENT. A person charged with an infraction shall not be entitled to a trial by jury. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him or her unless he or she is arrested and not released on his or her written promise to appear, his or her own recognizance, or a deposit of bail.

CREDIT(S)

1999 Electronic Pocket Part Update

(Formerly s 19c, added by Stats.1968, c. 1192, p. 2255, s 3, operative Jan. 1, 1969. Renumbered s 19.6 and amended by Stats.1989, c. 897, s 8.)

HISTORICAL AND STATUTORY NOTES

1999 Electronic Pocket Part Update

1989 Legislation
The 1989 amendment renumbered the section and made changes in gender references throughout the section.

West's Ann. Cal. Penal Code s 19.6
CA PENAL s 19.6
END OF DOCUMENT

West's F.S.A. s 918.0157

WEST'S FLORIDA STATUTES ANNOTATED
TITLE XLVII. CRIMINAL PROCEDURE AND CORRECTIONS
CHAPTER 918. CONDUCT OF TRIAL
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Current through End of 1998 2nd Reg. Sess.

918.0157. Right to trial by jury

In each prosecution for a violation of a state law or a municipal or county ordinance punishable by IMPRISONMENT, the defendant shall have, upon demand, the right to a trial by an impartial jury in the county where the offense was committed, except as to any such prosecution for a violation punishable for a term of IMPRISONMENT of 6 months or less, if at the time the case is set for trial the court announces that in the event of conviction of the crime as charged or of any lesser included offense a sentence of IMPRISONMENT will not be imposed and the defendant will not be adjudicated guilty, unless a right to trial by jury for such offense is guaranteed under the State or Federal Constitution.

HISTORICAL AND STATUTORY NOTES

1996 Main Volume

Derivation:
Laws 1986, c. 86-115, s 1.
West's F. S. A. s 918.0157
FL ST s 918.0157
END OF DOCUMENT

725 ILCS 5/103-6
Formerly cited as IL ST CH 38 P 103-6

WEST'S SMITH-HURD ILLINOIS COMPILED STATUTES ANNOTATED
CHAPTER 725. CRIMINAL PROCEDURE
ACT 5. CODE OF CRIMINAL PROCEDURE OF 1963
TITLE I. GENERAL PROVISIONS
ARTICLE 103. RIGHTS OF ACCUSED
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Current through P.A. 90-609, apv. 6/30/1998

5/103-6. Waiver of jury trial

s 103-6. Waiver of jury trial. Every person accused of an offense shall have the right to a trial by jury unless (i) understandingly waived by defendant in open court or (ii) the offense is an ordinance violation punishable by fine only and the defendant either fails to file a demand for a trial by jury at the time of entering his or her plea of not guilty or fails to pay to the clerk of the circuit court at the time of entering his or her plea of not guilty any jury fee required to be paid to the clerk.

CREDIT(S)

1992 Main Volume

Laws 1963, p. 2836, s 103-6, eff. Jan. 1, 1964. Amended by P.A. 86-1386, s 2, eff. Sept. 10, 1990.

FORMER REVISED STATUTES CITATION

1992 Main Volume

Formerly Ill.Rev.Stat.1991, ch. 38, P 103-6.

HISTORICAL AND STATUTORY NOTES

P.A. 86-1386 inserted "(i)" and added "or (ii) the offense is an ordinance violation punishable by fine only and the defendant either fails to file a demand for a trial by jury at the time of entering his or her plea of not guilty or fails to pay to the clerk of the circuit court at the time of entering his or her plea of not guilty any jury fee required to be paid to the clerk".

Ill.Rev.Stat.1933, ch. 38, P763, which was derived from Laws 1893, p. 96, s 1, repealed by Laws 1939, p. 1175, s 1, was declared invalid in Sturges & Burn Mfg. Co. v. Pastel, 301 Ill. 253, 133 N.E. 762, and read as follows: "Be it enacted by the People of the State of Illinois, represented in the General Assembly: That no person shall be IMPRISONED for nonpayment of a fine or a judgment in any civil, criminal, quasi criminal or qui tam action, except upon conviction by jury: Provided, that the defendant or defendants, in any such

action may waive a jury trial by executing a formal waiver in writing: And provided further, that this provision shall not be construed to apply to fines inflicted for contempt of court: And provided further, that when such waiver of a jury is made, IMPRISONMENT may follow judgment of the court without conviction by a jury."

Prior Laws:
R.L.1827, p. 162, s 176.
R.L.1833, p. 213, s 178.
R.S.1845, p. 186, s 188.
R.S.1874, p. 348, div. 13, s 8.
Laws 1941, vol. 1, p. 574, s 1.
Ill.Rev.Stat.1963, ch. 38, P736.
725 I.L.C.S. 5/103-6
IL ST CH 725 s 5/103-6
END OF DOCUMENT

Code 1957, Art. 27, s 593A

ANNOTATED CODE OF MARYLAND
CODE OF 1957
ARTICLE 27. CRIMES AND PUNISHMENTS.
II VENUE, PROCEDURE AND SENTENCE
Procedure

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Current through End of 1998 Reg. Sess.

s 593A Right to jury trial in criminal case.

In a criminal case tried in a court of general jurisdiction, there is no right to a jury trial unless the offense charged is subject to a penalty of IMPRISONMENT or unless there is a constitutional right to a jury trial for that offense.

(1980, ch. 298.)
Code 1957, Art. 27, s 593A
MD CODE 1957, Art. 27, s 593A
END OF DOCUMENT

N.J.S.A. 2B:12-18

NEW JERSEY STATUTES ANNOTATED
TITLE 2B. COURT ORGANIZATION AND CIVIL CODE
CHAPTER 12. MUNICIPAL COURTS
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Current through L.1998 c. 107

2B:12-18. Jurisdiction of specified offenses where indictment and trial by jury are waived

A municipal court has jurisdiction over the following crimes occurring within the territorial jurisdiction of the court, where the person charged waives indictment and trial by jury in writing and the county prosecutor consents in writing:

a. Crimes of the fourth degree enumerated in chapters 17, 18, 20 and 21 of Title 2C of the New Jersey Statutes; or

b. Crimes where the term of IMPRISONMENT that may be imposed does not exceed one year.

CREDIT(S)

1999 Electronic Update

L.1993, c. 293, s 1, eff. Feb. 15, 1994.

HISTORICAL AND STATUTORY NOTES

1999 Electronic Update

Source: N.J.S. 2A:8-22.

Statement: Committee statement to Senate, No. 875--L.1993, c. 293, see s 2B:12-1.

N. J. S. A. 2B:12-18
NJ ST 2B:12-18
END OF DOCUMENT

R.C. s 2945.17

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XXIX. CRIMES--PROCEDURE
CHAPTER 2945. TRIAL
TRIAL BY JURY

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Current through 1998 portion of 122nd G.A., Files 1 to 187, apv. 7/1/1998

2945.17 RIGHT OF TRIAL BY JURY

At any trial, in any court, for the violation of any statute of this state, or of any ordinance of any municipal corporation, except in cases in which the penalty involved does not exceed a fine of one hundred dollars, the accused has the right to be tried by a jury.

CREDIT(S)

(1972 H 511, eff. 1-1-74; 1953 H 1; GC 13443)

HISTORICAL AND STATUTORY NOTES

Pre-1953 H 1 Amendments: 115 v 78

COMMENTARY

Legislative Service Commission

1973:
This section provides that there is no right to trial by jury when the maximum penalty which may be imposed for the offense charged is no more than a fine of $100. Under former law, the jury limit was a potential penalty of a fine of $50. Since all minor misdemeanors under the new code call for a maximum penalty of a fine of $100, then all such offenses are nonjury matters.

An accused is entitled to a jury if the potential penalty for the offense charged is a fine of more than $100, even if IMPRISONMENT isn't imposed, or if the potential penalty includes IMPRISONMENT for any length of time no matter how short, even though a fine isn't imposed. It is emphasized that the determining factor is the potential penalty, not the penalty which is actually imposed in a given case.

R.C. s 2945.17
OH ST s 2945.17
END OF DOCUMENT

MEMORANDUM

TO: [redacted]
Assistant State's Attorney

April 8, 1996

FROM: Damian J. Huettl
Student Researcher
Central Legal Research—UND

Seq. No. 4993

WHETHER, PURSUANT TO THE NORTH DAKOTA CONSTITUTION, THE RIGHT TO JURY TRIAL ATTACHES TO A CLASS B MISDEMEANOR (DRIVING UNDER THE INFLUENCE) PROCEEDING WHEN IT IS THE OFFENDER'S FIRST OFFENSE AND IT IS COMMON PRACTICE AT THE INITIAL APPEARANCE FOR THE STATE TO RECOMMEND NO JAIL TIME?

YES. THE CONSTITUTION OF NORTH DAKOTA MAY BE INTERPRETED IN A MANNER THAT OFFERS GREATER CONSTITUTIONAL PROTECTIONS FOR ITS CITIZENS THAN THE EQUIVALENT FEDERAL PROVISION. THE NORTH DAKOTA RIGHT TO A JURY TRIAL MUST BE INTERPRETED IN ACCORDANCE WITH THE RIGHT AS IT EXISTED AT THE TIME OF THE ADOPTION OF THE STATE CONSTITUTION. AT THAT TIME, A JURY TRIAL WAS GUARANTEED TO ALL INDIVIDUALS FACING CONVICTION OF A PUBLIC OFFENSE. A PUBLIC OFFENSE, BY DEFINITION, IS ONE FOR WHICH THE DEFENDANT FACES THE POSSIBLE PUNISHMENTS OF IMPRISONMENT OR FINE. ACCORDINGLY, THE DUI PROVISION, AUTHORIZING THE IMPOSITION OF IMPRISONMENT OR FINES, QUALIFIES AS A PUBLIC OFFENSE.

STATEMENT OF FACTS

In North Dakota, particularly County X, it is common practice in first offense driving under the influence (DUI) proceedings for the State to recommend no jail time during the pretrial stages of a case, specifically at the initial appearance. As stated by the requester, last year County X charged approximately 375 offenders with DUI, and not once did the State recommend jail time for a first-time offender.

Upon a conviction for DUI, a first time offender is punished with a class B misdemeanor. For such offenses, the North Dakota legislature authorizes a maximum penalty of thirty days' imprisonment, a fine of five hundred dollars, or both. N.D. Cent. Code § 12.1-32-01(6) (Supp. 1995). In addition, the statute specific to DUI *requires* a minimum $250 fine and mandatory admission into an alcohol rehabilitation center. N.D. Cent. Code § 39-08-01(4) (Supp. 1995).

QUESTION PRESENTED

Whether, pursuant to the North Dakota Constitution, the right to jury trial attaches to a class B misdemeanor (driving under the influence) proceeding when it is the offender's first offense and it is common practice for the State at the initial appearance to recommend no jail time?

ANALYSIS

A. The Imposition Of Punishment For a North Dakota DUI Conviction Does Not Meet The Seriousness Requirement So As To Warrant Jury Trial Under the United States Constitution.

The Sixth Amendment of the United States Constitution guarantees all persons criminally accused the right to a jury trial. U.S. Const. amend. VI. This right is extended to the fifty states through the Due Process Clause of the Fourteenth Amendment. *Duncan v. Louisiana,* 391 U.S. 145, 156 (1968).

The United States Supreme Court, however, limited this right to serious offenses. *Baldwin v. New York,* 399 U.S. 66 (1970). In *Baldwin,* the Court held that "where the possible penalty exceeds six months' imprisonment," the defendant could not be denied the important right to a jury trial. *Id.* at 74. Later, the Court specified that this standard may be overcome by a showing that the combination of penalties is so severe that it "clearly reflect[s] a legislative determination that the offense in question is a serious one." *Blanton v. City of N. Las Vegas,* 489 U.S. 538, 543 (1989).

In *Blanton,* the defendants, first time DUI offenders under a Nevada statute, were denied their right to a jury trial by a local Nevada court. 489 U.S. at 539. Under Nevada law, first offense DUI is punishable by a minimum term of two days' imprisonment and a maximum term of six months' imprisonment. *Id.* Alternatively, a trial court may order the defendant to perform forty-eight hours of work for the community while dressed in distinctive garb which identifies him as a DUI offender. *Id.* In addition, the defendant must pay a fine ranging from $200 to $1,000. *Id.* Lastly, the defendant's driving privileges are suspended for ninety days and the defendant is required to attend, at his own expense, an alcohol abuse education course. *Id.* at 539-40.

The defendants, both facing their first DUI conviction, were denied a jury trial by the North Las Vegas Municipal Court. *Blanton*, 489 U.S. at 540. Their appeals were consolidated and promptly denied until reaching the Supreme Court of Nevada. *Id.* at 540. Since the defendants were subject only to a maximum of six months' imprisonment and a maximum fine of $1,000, the Nevada Supreme Court concluded that their requests for a jury trial were appropriately denied by the lower courts. *Id.* at 540. The United States Supreme Court granted certiorari and affirmed, relying on the presumption that because of the nature of the statutory penalties authorized by the Nevada legislature, the legislature does not consider DUI a "serious offense." *Id.* at 540.

Factually, many similarities exist concerning the various sentencing alternatives between the case at hand and *Blanton*. Comparing the Nevada statute at issue in *Blanton* to the sentencing provisions of the North Dakota Century Code, a convincing argument could be made in support of denying first time DUI offenders in North Dakota the right to a jury trial as a matter of federal constitutional protection. A defendant's first DUI conviction under section 39-08-01(4) results in the imposition of a class B misdemeanor which consists of a maximum penalty of "thirty days' imprisonment, a fine of $500, or both." N.D. Cent. Code § 12.1-32-01 (Supp. 1995). Also, specific to a DUI conviction, the legislature mandated a minimum $250 fine and a forced evaluation at an alcohol rehabilitation center. N.D. Cent. Code § 39-08-01(4) (Supp. 1995).

The imposition of these penalties is considerably less severe than the penalties at issue in *Blanton*. Particularly, there is no legislatively imposed minimum jail sentence, and only a maximum of thirty days' incarceration, for a first time DUI conviction in North Dakota. N.D. Cent. Code § 39-08-01(4). Compare this with the considerably harsher penalties at issue in *Blanton*, where the Nevada legislature prescribed a minimum jail sentence of two days, while the maximum period of imprisonment could potentially span six months. 489 U.S. at 540. Therefore, the position could be taken that the right to a jury trial is of greater consequence to a DUI offender in Nevada because his loss of liberty is considerably more exacting than a defendant similarly situated in North Dakota. Consequently, a rejection of the defendant's sixth amendment right by the United States Supreme Court would also result in a denial of that right in North Dakota. Lastly, the failure to categorize the Nevada offense as serious would also require a similar classification of the less stringent North Dakota counterpart. *Blanton*, 489 U.S. at 540.

B. The State Constitutional Right to a Trial by Jury May Be Construed More Broadly Than the Similar Federal Provision in Order to Ensure Greater Constitutional Safeguards to North Dakota Citizens

The arguments noted in the above section will likely prevail for the sixth amendment issue according to the precedent established in *Blanton*, 489 U.S. at 545. However, the North Dakota Supreme Court maintains the power to apply higher constitutional standards under the state constitution than are required by the federal constitution. *State v. Matthews*, 216 N.W.2d 90, 99 (N.D. 1974). By the same token, the rights guaranteed by the state constitution cannot be narrower than those granted by the federal constitution. *Southeast Cass Water Resource Dist. v. Burlington N. R.R. Co.*, 527 N.W.2d 884, 890 (N.D. 1995). Thus, the constitution of North Dakota can be interpreted to afford greater protection to the right of trial by jury than the comparable federal provision. *Id.*

The right to a jury trial as guaranteed by the North Dakota constitution reads:

> *The right of trial by jury shall be secured to all, and remain inviolate.* A person accused of a crime for which he may be confined for a period of more than one year has the right of trial by a jury of twelve. The legislative assembly may determine the size of the jury for all other cases, provided that the jury consists of at least six members. All verdicts must be unanimous.

N.D. Const. art. I, § 13 (emphasis added).

Seemingly, the above constitutional guarantee preserves the jury trial right to all persons, in both the civil and the criminal contexts, regardless of the alleged crime, with adjustments to the number of jurors based on the severity of the apparent infraction. Thus, the first sentence seems to be a sweeping declaration, exclusively preserving the right to a jury trial under all circumstances. However, as even a cursory examination of the Century Code reveals, this right is not all inclusive.

In particular, the legislature specified that the right to a jury trial does not attach in a civil small claims court action. N.D. Cent. Code § 27-08.1-03 (Supp. 1995) (providing "[a] trial by jury shall not be allowed in small claims court"). *See also Selland v. Selland*, 519 N.W.2d 21, 22 (N.D. 1994) (no jury trial right in divorce proceedings); *Kopperud v. Reilly*, 453 N.W.2d 598, 601 (N.D. 1990) (no right to a jury trial in suits at equity); *In re R.Z.*, 415 N.W.2d 486, 487 (N.D. 1987) (no constitutional right to a jury trial in involuntary commitment to a mental health facility proceedings); *Dobervich v. Central Cass Pub. Sch. Dist. No. 17*, 283 N.W.2d 187, 190 (N.D. 1979) (issue of nonrenewal of a teacher's contract is an issue of law and the right to a jury trial has historically been denied in actions determining issues of

law); *State v. Wells*, 265 N.W.2d 239, 242 (N.D. 1978) (no right to a jury trial in sentencing). Aside from the obvious issue of whether such individuals bringing claims in small claims court should be afforded a jury trial, the broader constitutional argument could be made that, despite the declaration in the state constitution, the right to a jury trial is not secured to all and does not remain inviolate. *See* N.D. Const. art. I, § 13.

In its provision for waiver of a jury trial in section 29-16-02 of the North Dakota Century Code, the legislature has provided that "in any case, whether a misdemeanor or felony . . . issues of fact must be tried by jury" unless waived by the defendant. N.D. Cent. Code § 29-16-02 (1991). Additionally, Rule 23(a) of the North Dakota Rules of Criminal Procedure provides, "[t]rial must be by jury *in all cases as provided by law* unless the defendant waives a jury trial in writing or in open court with the approval of the court and consent of the prosecuting attorney." N.D. R. Crim. P. 23(a) (emphasis added). The North Dakota Supreme Court acknowledged that the Rules of Criminal Procedure, "[e]xcept as otherwise provided by statute and in Rule 54, govern the practice and procedure in all criminal proceedings in the district courts and, so far as applicable, in all other courts, including prosecutions for violations of municipal ordinances." *City of Fargo v. Racek*, 466 N.W.2d 584 (N.D. 1991) (citing N.D. R. Crim. P. 1 as it existed in 1991). *See* N.D. R. Crim. P. 1 (except for the omission of the phrase "by statute," the 1996 rules are identical to the 1991 rules quoted in *Racek*).

The portion of the constitution stating that the "right of trial by jury shall be secured to all, and remain inviolate," preserves the right of trial by jury as it existed at the time of the adoption of the North Dakota state constitution. *City of Bismarck v. Altevogt*, 353 N.W.2d 760 (N.D. 1984) (involving appeal from a municipal court conviction to a county court and asserting right to a jury trial in the county court).

The Compiled Laws of the Territory of Dakota, defining the right to trial by jury as it existed at the time of the adoption of the state constitution, provide that "[n]o person can be convicted of a public offense unless by the verdict of a jury." N.D. Compiled Laws 1887, § 7038 (1887). The phrase "public offense" is defined in the territorial laws as "an act or omission forbidden by law, and to which is annexed, upon conviction, either of the following punishments . . . (2) Imprisonment, (3) Fine." *Id.* § 7026.

The current DUI law specifies the penalties of imprisonment and/or fine, and, thus, would qualify as a "public offense," as that term was defined by the territorial laws which existed at the time of the North Dakota Constitution's inception. *Id.* Consequently, the right to a jury trial must be preserved for all individuals accused of DUI pursuant to state constitutional law.

CONCLUSION

The United States Constitution limits the individual right to a jury trial to cases where the possible penalty imposed is "serious." A showing of seriousness requires that the possible penalty imposed exceeds six months' imprisonment or a determination that the combination of penalties is so severe that it clearly reflects a legislative determination that the offense in question is a serious one.

However, the Constitution of North Dakota may be interpreted in a manner that offers greater constitutional protections for its citizens than the equivalent federal provision. The North Dakota right to a jury trial must be interpreted in accordance with the right as it existed at the time of the adoption of the state constitution. At that time, a jury trial was guaranteed to all individuals facing conviction of a public offense. A public offense, by definition, requires that the defendant face the possible punishments of imprisonment or fine. Because the state DUI provision authorizes imposition of imprisonment or fines, driving under the influence qualifies as a public offense. Thus, first-time offenders are entitled to trial by jury.

BALDWIN v. NEW YORK

APPEAL FROM THE COURT OF APPEALS OF NEW YORK

No. 188. Argued December 9, 1969—Decided June 22, 1970

Appellant was charged with a misdemeanor in the New York City Criminal Court. Under § 40 of the New York City Criminal Court Act all trials in that court are without a jury. Appellant's motion for a jury trial was denied, he was convicted, and given the maximum sentence of a year's imprisonment. The highest state court affirmed, rejecting appellant's contention that § 40 was unconstitutional. *Held:* The judgment is reversed. Pp. 67–76.

24 N. Y. 2d 207, 247 N. E. 2d 260, reversed.

MR. JUSTICE WHITE, joined by MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL, concluded that defendants accused of serious crimes must, under the Sixth Amendment, as made applicable to the States by the Fourteenth Amendment, be afforded the right to trial by jury, *Duncan* v. *Louisiana*, 391 U. S. 145, and though "petty crimes" may be tried without a jury, no offense can be deemed "petty" for purposes of the right to trial by jury where imprisonment for more than six months is authorized. Pp. 68–74.

MR. JUSTICE BLACK, joined by MR. JUSTICE DOUGLAS, concluded that the constitutional guarantee of the right to trial by jury applies to "all crimes" and not just to those crimes deemed to be "serious." Pp. 74–76.

William E. Hellerstein argued the cause for appellant. With him on the brief were *Leon B. Polsky* and *Alice Daniel.*

Michael R. Juviler argued the cause for appellee. With him on the brief were *Frank S. Hogan, Lewis R. Friedman,* and *David Otis Fuller, Jr.*

Louis J. Lefkowitz, Attorney General, *pro se, Samuel A. Hirshowitz,* First Assistant Attorney General, and *Maria L. Marcus,* Assistant Attorney General, filed a brief for the Attorney General of New York as *amicus curiae* urging affirmance.

MR. JUSTICE WHITE announced the judgment of the Court and delivered an opinion in which MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join.

Appellant was arrested and charged with "jostling"—a Class A misdemeanor in New York, punishable by a maximum term of imprisonment of one year.[1] He was brought to trial in the New York City Criminal Court. Section 40 of the New York City Criminal Court Act declares that all trials in that court shall be without a jury.[2] Appellant's pretrial motion for jury trial was accordingly denied. He was convicted and sentenced to imprisonment for the maximum term. The New York

[1] "Jostling" is one of the ways in which legislatures have attempted to deal with pickpocketing. See Denzer & McQuillan, Practice Commentary, N. Y. Penal Law, following § 165.25; Note, Pickpocketing: A Survey of the Crime and Its Control, 104 U. Pa. L. Rev. 408, 419 (1955). The New York law provides:

"A person is guilty of jostling when, in a public place, he intentionally and unnecessarily:

"1. Places his hand in the proximity of a person's pocket or handbag; or

"2. Jostles or crowds another person at a time when a third person's hand is in the proximity of such person's pocket or handbag." N. Y. Penal Law § 165.25.

Appellant was convicted on the testimony of the arresting officer. The officer stated that he had observed appellant, working in concert with another man, remove a loose package from an unidentified woman's pocketbook after the other man had made a "body contact" with her on a crowded escalator. He arrested both men, searched appellant, and found a single $10 bill. No other testimony or evidence was introduced on either side. The trial judge thought the police officer "a very forthright and credible witness" and found appellant guilty. He was subsequently sentenced to one year in the penitentiary. See App. 1–17, 21.

[2] "All trials in the court shall be without a jury. All trials in the court shall be held before a single judge; provided, however, that where the defendant has been charged with a misdemeanor . . . [he] shall be advised that he has the right to a trial in a part of the court held by a panel of three of the judges thereof . . . ." N. Y. C. Crim. Ct. Act § 40 (Supp. 1969).

Court of Appeals affirmed the conviction, rejecting appellant's argument that § 40 was unconstitutional insofar as it denied him an opportunity for jury trial.[3] We noted probable jurisdiction.[4] We reverse.

In *Duncan* v. *Louisiana,* 391 U. S. 145 (1968), we held that the Sixth Amendment, as applied to the States through the Fourteenth, requires that defendants accused of serious crimes be afforded the right to trial by jury. We also reaffirmed the long-established view that so-called "petty offenses" may be tried without a jury.[5] Thus the task before us in this case is the essential if not wholly satisfactory one, see *Duncan,* at 161, of determining the line between "petty" and "serious" for purposes of the Sixth Amendment right to jury trial.

Prior cases in this Court narrow our inquiry and furnish us with the standard to be used in resolving this issue. In deciding whether an offense is "petty," we have sought objective criteria reflecting the seriousness with which society regards the offense, *District of Columbia* v. *Clawans,* 300 U. S. 617, 628 (1937), and we have found the most relevant such criteria in the severity of the maximum authorized penalty. *Frank* v. *United States,* 395 U. S. 147, 148 (1969); *Duncan* v. *Louisiana, supra,* at 159–161; *District of Columbia* v. *Clawans, supra,* at 628. Applying these guidelines, we have held

[3] 24 N. Y. 2d 207, 247 N. E. 2d 260 (1969).

[4] 395 U. S. 932 (1969).

[5] *Duncan* v. *Louisiana,* 391 U. S. 145, 159 (1968); see *Cheff* v. *Schnackenberg,* 384 U. S. 373 (1966); *District of Columbia* v. *Clawans,* 300 U. S. 617 (1937); *District of Columbia* v. *Colts,* 282 U. S. 63 (1930); *Schick* v. *United States,* 195 U. S. 65 (1904); *Natal* v. *Louisiana,* 139 U. S. 621 (1891); *Callan* v. *Wilson,* 127 U. S. 540 (1888); Frankfurter & Corcoran, Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury, 39 Harv. L. Rev. 917 (1926). But see Kaye, Petty Offenders Have No Peers!, 26 U. Chi. L. Rev. 245 (1959).

that a possible six-month penalty is short enough to permit classification of the offense as "petty," *Dyke* v. *Taylor Implement Co.,* 391 U. S. 216, 220 (1968); *Cheff* v. *Schnackenberg,* 384 U. S. 373 (1966), but that a two-year maximum is sufficiently "serious" to require an opportunity for jury trial, *Duncan* v. *Louisiana, supra.* The question in this case is whether the possibility of a one-year sentence is enough in itself to require the opportunity for a jury trial. We hold that it is. More specifically, we have concluded that no offense can be deemed "petty" for purposes of the right to trial by jury where imprisonment for more than six months is authorized.[6]

New York has urged us to draw the line between "petty" and "serious" to coincide with the line between misdemeanor and felony. As in most States, the maximum sentence of imprisonment for a misdemeanor in New York is one year, for a felony considerably longer.[7] It is also true that the collateral consequences attaching to a felony conviction are more severe than those attaching to a conviction for a misdemeanor.[8] And, like other

[6] Decisions of this Court have looked to both the nature of the offense itself, *District of Columbia* v. *Colts,* 282 U. S. 63 (1930), as well as the maximum potential sentence, *Duncan* v. *Louisiana,* 391 U. S. 145 (1968), in determining whether a particular offense was so serious as to require a jury trial. In this case, we decide only that a potential sentence in excess of six months' imprisonment is sufficiently severe by itself to take the offense out of the category of "petty." None of our decisions involving this issue have ever held such an offense "petty." See cases cited n. 5, *supra.*

[7] N. Y. Penal Law, §§ 10.00, 70.15 (1967).

[8] Both the convicted felon and the convicted misdemeanant may be prevented under New York law from engaging in a wide variety of occupations. In addition, the convicted felon is deprived of certain civil rights, including the right to vote and to hold public office. The relevant statutes are set out in Brief for Appellant C–1 to C–6; Brief for Appellee A8–A12.

States, New York distinguishes between misdemeanors and felonies in determining such things as whether confinement shall be in county or regional jails, rather than state prison,[9] and whether prosecution may proceed by information or complaint, rather than by grand jury indictment.[10] But while these considerations reflect what may readily be admitted—that a felony conviction is more serious than a misdemeanor conviction—they in no way detract from appellant's contention that some misdemeanors are also "serious" offenses. Indeed we long ago declared that the Sixth Amendment right to jury trial "is not to be construed as relating only to felonies, or offences punishable by confinement in the penitentiary. It embraces as well some classes of misdemeanors, the punishment of which involves or may involve the deprivation of the liberty of the citizen." *Callan* v. *Wilson*, 127 U. S. 540, 549 (1888).[11]

A better guide "[i]n determining whether the length of the authorized prison term or the seriousness of other punishment is enough in itself to require a jury trial" is disclosed by "the existing laws and practices in the Nation." *Duncan* v. *Louisiana*, *supra*, at 161. In the federal system, as we noted in *Duncan*, petty offenses

[9] See statutes cited n. 7, *supra;* N. Y. Penal Law § 70.20 (1967).

[10] N. Y. Const., Art. I, § 6; N. Y. Code Crim. Proc. §§ 22, 222 (1958); N. Y. C. Crim. Ct. Act §§ 31, 41 (1963); see, *e. g., People* v. *Bellinger*, 269 N. Y. 265, 199 N. E. 213 (1935); *People* v. *Van Dusen*, 56 Misc. 2d 107, 287 N. Y. S. 2d 741 (1967).

[11] Even New York distinguishes among misdemeanors in terms of the seriousness of the offense. Following a recent revision of the penal law, Class A misdemeanors were made punishable by up to one year's imprisonment, Class B misdemeanors up to three months' imprisonment, and "violations" up to 15 days. As Judge Burke noted in his dissenting opinion below, "an argument can be made with some force that the Legislature has identified petty offenses as those included in the 'violations' category and in the category of class B misdemeanors." 24 N. Y. 2d 207, 225, 247 N. E. 2d 260, 270 (1969).

have been defined as those punishable by no more than six months in prison and a $500 fine.[12] And, with a few exceptions, crimes triable without a jury in the American States since the late 18th century were also generally punishable by no more than a six-month prison term.[13] Indeed, when *Duncan* was decided two Terms ago, we could discover only three instances in which a State denied jury trial for a crime punishable by imprisonment for longer than six months: the Louisiana scheme at issue in *Duncan*, a New Jersey statute punishing disorderly conduct, and the New York City statute at issue in this case.[14] These three instances have since been reduced to one. In response to the decision in *Duncan*, Louisiana has lowered the penalty for certain misdemeanors to six months, and has provided for a jury trial where the penalty still exceeds six months.[15] New Jersey has amended its disorderly persons statute by reducing the maximum penalty to six months' imprisonment and a $500 fine.[16] Even New York State would have provided appellant with a six-man-jury trial for this offense if he had been tried outside the City of New York.[17] In the entire Nation, New York City alone

[12] 18 U. S. C. § 1.

[13] Frankfurter & Corcoran, n. 5, *supra*.

[14] *Duncan* v. *Louisiana*, 391 U. S. 145, 161 n. 33 (1968).

[15] La. Crim. Proc. Code Ann., Art. 779 (Supp. 1969): see Comment, Jury Trial in Louisiana—Implications of Duncan, 29 La. L. Rev. 118, 127 (1968).

[16] N. J. Rev. Stat. § 2A:169-4 (Supp. 1969).

[17] Compare N. Y. C. Crim. Ct. Act § 40 (Supp. 1969), with N. Y. Uniform Dist. Ct. Act § 2011 (1963); N. Y. Uniform City Ct. Act § 2011 (Supp. 1969). Because of our disposition of this case on appellant's jury-trial claim, we find it unnecessary to consider his argument that New York has violated the Equal Protection Clause by denying him a jury trial, while granting a six-man-jury trial to defendants charged with the identical offense elsewhere in the State. See *Salsburg* v. *Maryland*, 346 U. S. 545 (1954); *Missouri* v. *Lewis*, 101 U. S. 22 (1880). See generally Horowitz & Neitring, Equal

denies an accused the right to interpose between himself and a possible prison term of over six months, the commonsense judgment of a jury of his peers.[18]

It is true that in a number of these States the jury provided consists of less than the 12-man, unanimous-verdict jury available in federal cases.[19] But the primary purpose of the jury is to prevent the possibility of oppression by the Government; the jury interposes between the accused and his accuser the judgment of laymen who are less tutored perhaps than a judge or panel of judges, but who at the same time are less likely to function or appear as but another arm of the Government that has proceeded against him.[20] Except for the criminal courts of New York City, every other court in the Nation proceeds under jury trial provisions that reflect this "fundamental decision about the exercise of official power," *Duncan* v. *Louisiana*, *supra*, at 156, when what is at stake is the deprivation of individual liberty for a period exceeding six months. This near-uniform judgment of the Nation furnishes us with the only objective criterion by which a line could ever be drawn—on the basis of the possible penalty alone—between

Protection Aspects of Inequalities in Public Education and Public Assistance Programs From Place to Place Within a State, 15 U. C. L. A. L. Rev. 787–804 (1968).

[18] The various state statutory provisions are set out in the briefs filed in this case. A survey is also included in American Bar Assn. Project on Standards for Criminal Justice, Advisory Committee on the Criminal Trial, Trial by Jury 20–23 (Approved Draft 1968) (recommending that the possibility of six months' imprisonment and a fine of $500, "should be the upper limit upon the definition of 'petty offenses' ").

[19] In a related decision of this date we hold that trial by a six-man jury satisfies the Sixth Amendment requirement of jury trial. *Williams* v. *Florida*, *post*, p. 78.

[20] Thus a trial before a panel of three judges, which appellant might have requested in lieu of trial before a single judge, see n. 2, *supra*, can hardly serve as a substitute for a jury trial.

offenses that are and that are not regarded as "serious" for purposes of trial by jury.[21]

Of necessity, the task of drawing a line "requires attaching different consequences to events which, when they lie near the line, actually differ very little." *Duncan* v. *Louisiana*, *supra*, at 161. One who is threatened with the possibility of imprisonment for six months may find little difference between the potential consequences that face him, and the consequences that faced appellant here. Indeed, the prospect of imprisonment for however short a time will seldom be viewed by the accused as a trivial or "petty" matter and may well result in quite serious repercussions affecting his career and his reputation. Where the accused cannot possibly face more than six months' imprisonment, we have held that these disadvantages, onerous though they may be, may be outweighed by the benefits that result from speedy and inexpensive nonjury adjudications. We cannot, however, conclude that these administrative conveniences, in light of the practices that now exist in every one of the 50 States as well as in the federal courts, can sim-

[21] We find little relevance in the fact that Congress has defined misdemeanors punishable by imprisonment up to one year as "minor offenses" for purposes of vesting trial jurisdiction in the United States magistrates rather than commissioners, 18 U. S. C. § 3401 (f) (1964 ed., Supp. IV), or for purposes of authorizing eavesdropping under state court orders, 18 U. S. C. § 2516 (2) (1964 ed., Supp. IV), or for purposes of determining the eligibility for jury service of formerly convicted persons, 28 U. S. C. § 1865 (b)(5) (1964 ed., Supp. IV). Such statutes involve entirely different considerations from those involved in deciding when the important right to jury trial shall attach to a criminal proceeding. Nothing in any of the above Acts suggests that Congress meant to alter its longstanding judgment that "[n]otwithstanding any Act of Congress to the contrary . . . [a]ny misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both, is a petty offense." 18 U. S. C. § 1.

ilarly justify denying an accused the important right to trial by jury where the possible penalty exceeds six months' imprisonment.[22] The conviction is

Reversed.

MR. JUSTICE BLACKMUN took no part in the consideration or decision of this case.

[For dissenting opinion of MR. JUSTICE HARLAN, see *post*, p. 117.]

[For dissenting opinion of MR. JUSTICE STEWART, see *post*, p. 143.]

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS joins, concurring in the judgment.

I agree that the appellant here was entitled to a trial by jury in a New York City court for an offense punishable by one year's imprisonment. I also agree that his right to a trial by jury was governed by the Sixth Amendment to the United States Constitution made applicable to the States by the Fourteenth Amendment. I disagree, however, with the view that a defendant's right to a jury trial under the Sixth Amendment is determined by whether the offense charged is a "petty" or "serious" one. The Constitution guarantees a right of trial by jury in two separate places but in neither does it hint of any difference between "petty" offenses and "serious" offenses. Article III, § 2, cl. 3, provides that "[t]he Trial of all Crimes, except in Cases of Impeachment, shall be by Jury," and Amendment VI provides that "[i]n all criminal prosecutions, the accused shall

[22] Experience in other States, notably California where jury trials are available for all criminal offenses including traffic violations, Cal. Pen. Code § 689 (1956), suggests that the administrative burden is likely to be slight, with a very high waiver rate of jury trials. See H. Kalven & H. Zeisel, The American Jury 18–19 and n. 12 (1966).

enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . ." Thus the Constitution itself guarantees a jury trial "[i]n all criminal prosecutions" and for "all crimes." Many years ago this Court, without the necessity of an amendment pursuant to Article V, decided that "all crimes" did not mean "all crimes," but meant only "all serious crimes."[1] Today three members of the Court would judicially amend that judicial amendment and substitute the phrase "all crimes in which punishment for more than six months is authorized." This definition of "serious" would be enacted even though those members themselves recognize that imprisonment for less than six months may still have serious consequences. This decision is reached by weighing the advantages to the defendant against the administrative inconvenience to the State inherent in a jury trial and magically concluding that the scale tips at six months' imprisonment. Such constitutional adjudication, whether framed in terms of "fundamental fairness," "balancing," or "shocking the conscience," amounts in every case to little more than judicial mutilation of our written Constitution. Those who wrote and adopted our Constitution and Bill of Rights engaged in all the balancing necessary. They decided that the value of a jury trial far outweighed its costs for "all crimes" and "[i]n all criminal prosecutions." Until that language is changed by the constitutionally prescribed method of amendment, I cannot agree that this Court can reassess the balance and substitute its own judgment for that embodied in the Constitution. Since there can be no doubt in this case that Baldwin was charged with and convicted of a "crime" in any relevant sense

[1] See *Callan* v. *Wilson*, 127 U. S. 540 (1888); *District of Columbia* v. *Colts*, 282 U. S. 63 (1930); *District of Columbia* v. *Clawans*, 300 U. S. 617 (1937); cf. *Schick* v. *United States*, 195 U. S. 65 (1904).

of that word—I agree that his conviction must be reversed because he was convicted without the benefit of a jury trial.[2]

MR. CHIEF JUSTICE BURGER, dissenting.

I dissent from today's holding that something in the Sixth and Fourteenth Amendments commands New York City to provide trial by jury for an offense punishable by a confinement of more than six months but less than one year. MR. JUSTICE BLACK has noted correctly that the Constitution guarantees a jury trial "[i]n all criminal prosecutions" (Amendment VI) and for "all Crimes" (Art. III, § 2, cl. 3), but these provisions were not written as a command to the States; they were written at a time when the Federal Government exercised only a limited authority to provide for federal offenses "very grave and few in number."[1] The limited number of serious acts that were made criminal offenses were against federal authority, and were proscribed in a period when administration of the criminal law was regarded as largely the province of the States. The Founding

[2] My view does not require a conclusion that every act which may lead to "minuscule" sanctions by the Government is a "crime" which can only be punished after a jury trial. See *Frank* v. *United States*, 395 U. S. 147, 159–160 (1969) (dissenting opinion). There may be instances in which certain conduct is punished by fines or other sanctions in circumstances that would not make that conduct criminal. Not all official sanctions are imposed in criminal proceedings, but when, as in this case, the sanction bears all the indicia of a criminal punishment, a jury trial cannot be denied by labeling the punishment "petty."

[1] See Frankfurter & Corcoran, Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury, 39 Harv. L. Rev. 917, 975–976 (1926), where the authors observe: "Until very recently the occasion for considering the dispensability of trial by jury in the enforcement of the criminal law has hardly presented itself to Congress, except as to the Territories and the District of Columbia, because, on the whole, federal offenses were at once very grave and few in number." (Footnote omitted.)

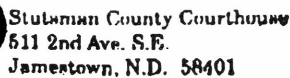
Fathers therefore cast the constitutional provisions we deal with here as limitations on federal power, not the power of States. State administration of criminal justice included a wide range of petty offenses, and as to many of the minor cases, the States often did not require trial by jury.[2] This state of affairs had not changed appreciably when the Fourteenth Amendment was approved by Congress in 1866 and was ratified by the States in 1868. In these circumstances, the jury trial guarantees of the Constitution properly have been read as extending only to "serious" crimes. I find, however, nothing in the "serious" crime coverage of the Sixth or Fourteenth Amendment that would require this Court to invalidate the particular New York City trial scheme at issue here.

I find it somewhat disconcerting that with the constant urging to adjust ourselves to being a "pluralistic society"—and I accept this in its broad sense—we find constant pressure to conform to some uniform pattern on the theory that the Constitution commands it. I see no reason why an infinitely complex entity such as New York City should be barred from deciding that misdemeanants can be punished with up to 365 days' confinement without a jury trial while in less urban areas another body politic would fix a six-month maximum for offenses tried without a jury. That the "near-uniform judgment of the Nation" is otherwise than the judgment in some of its parts affords no basis for me to read into the Constitution something not found there. What may be a serious offense in one setting—*e. g.*, stealing a horse in Cody, Wyoming, where a horse may be an indispensable part of living—may be considered less serious in another area, and the procedures for finding guilt and fixing punishment in the two locales may rationally differ from each other.

[2] See *id.*, at 934–965; *District of Columbia* v. *Clawans*, 300 U. S. 617, 626 (1937).

Stutsman County State's Attorney's Office

John E. Greenwood, State's Attorney
Fritz Fremgen, Assistant State's Attorney
Joan Y. Halvorson, M.Ed. Victim/Witness Coordinator
Cindy Schauer, Administrative Coordinator



Stutsman County Courthouse
511 2nd Ave. S.E.
Jamestown, N.D. 58401

Phone: (701) 252-6688
Fax: (701) 251-1603

TO: Doug Mattson

February 8, 1999

My name is John Greenwood, and I am the State's Attorney for Stutsman County. I support the Concurrent Resolution which proposes to amend the Constitution that provides for trial by jury in cases where a person may be confined for a period of more than six months if convicted. The judicial district in which I reside is struggling with the reduction in the number of judges to hear cases. This proposed constitutional amendment, if passed, would assist in the use of those judicial services. I urge the passage of this resolution. Thank you.

Stutsman County State's Attorney's Office

John E. Greenwood, State's Attorney
Fritz Fremgen, Assistant State's Attorney
Joan Y. Halvorson, M.Ed. Victim/Witness Coordinator
Cindy Schauer, Administrative Coordinator

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Phone: (701) 252-6688
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February 8, 1999

Representative Stacey Mickelson
House of Representatives
State Capitol
Bismarck, ND 58505

RE: House Concurrent Resolution No. 3017

My name is Joan Halvorson and I am the Victim Witness Coordinator for the Stutsman County State's Attorney. I support the proposed Current Resolution that limits jury trials to only those persons who, if convicted would be facing more than six months of incarceration. I see this Resolution as a victim friendly bill. Jury trials, at least in our jurisdiction, often are held, at a minimum, six to nine months after the crime is committed. Some may be held a year after the crime. These time delays are often frustrating for those who have been victimized by crime. It doesn't allow for the healing process to begin and for them to get on with their lives. The very system they turn to in order to receive justice just ends up revictimizing them.

Thank you for sponsoring this important legislation.

Sincerely,

Joan Halvorson, M.Ed.
Victim Assistance
Stutsman County

***707** 450 N.W.2d 707

58 USLW 2435

Bernhard ODDEN, Petitioner,
v.
The Honorable James H. O'KEEFE, Presiding Judge, Northeast Judicial District, and the Honorable William A. Neumann, Judge of the District Court, McHenry County, Northeast Judicial District, Respondents.

Civ. No. 890404.
Supreme Court of North Dakota.
Jan. 17, 1990.

Plaintiff in personal injury and wrongful death action sought supervisory writ to require scheduling of his action for jury trial. The Supreme Court held that state judicial district's blanket moratorium on civil jury trials for balance of biennium to achieve necessary budget cuts involved significant period of time and violated plaintiff's state constitutional right to civil jury trial.

Ordered accordingly.

1. COURTS ⚷204
106 ----
106VI Courts of Appellate Jurisdiction
106VI(A) Grounds of Jurisdiction in General
106k204 Supervisory jurisdiction.
N.D. 1990.
State Supreme Court's power to issue supervisory writ is discretionary and cannot be invoked as a matter of right; Court's superintending control over inferior courts is used to prevent injustice in extraordinary cases where no other remedy is adequate or allowed by law. Const. Art. 6, Sec. 2.

2. JURY ⚷31.2(1)
230 ----
230II Right to Trial by Jury
230k30 Denial or Infringement of Right
230k31.2 Rights of Action and Procedure in Civil Cases
230k31.2(1) In general.

Formerly 230k31(3)
N.D. 1990.
State judicial district's blanket moratorium on civil jury trials for 18-month balance of biennium to achieve necessary budget cuts involved significant period of time and violated plaintiff's state constitutional right to civil jury trial. Const. Art. 1, Sec. 13.

Chapman & Chapman, Bismarck, Charles L. Chapman and Michael J. Geiermann, for petitioner.

The Honorable James H. O'Keefe, Presiding Judge, Northeast Judicial District, State of North Dakota; the Honorable William A. Neumann, Judge of the District Court, Northeast Judicial District, State of North Dakota; and McGee, Hankla, Backes & Wheeler, Ltd., Norwest Bank Building, P.O. Box 998, Minot, ND 58702-0998, Donald L. Peterson, for respondents.

PER CURIAM.

The petitioner, Bernhard Odden, requests this court to issue a supervisory writ requiring the Honorable James H. O'Keefe, the Presiding Judge of the Northeast Judicial District, and the Honorable William A. Neumann, a judge in that district, to schedule his civil action for jury trial. The application for a supervisory writ is denied.

Odden's personal injury and wrongful death action was scheduled for a jury trial before Judge Neumann in the Northeast Judicial District on January 29, 1990. By letter, dated December 20, 1989, Judge Neumann informed Odden that his scheduled jury trial was being postponed because Judge O'Keefe had ordered a moratorium on civil jury trials to achieve necessary budget cuts. The moratorium was anticipated to last for the balance of the 1989-1991 biennium. Odden petitioned this court for a supervisory writ. (FN1)

***708** [1] The court's authority to issue a supervisory writ is derived from Article VI, Sec. 2 of the North Dakota Constitution. Lang v. Glaser, 359 N.W.2d 884 (N.D.1985). Our power to issue a supervisory writ is discretionary and cannot be invoked as a matter of right. Minot Daily News et al. v. Holum, 380 N.W.2d 347 (N.D.1986). Our superintending control over inferior courts is used to prevent injustice in extraordinary cases where no other remedy is adequate or allowed by law. Minot Daily News et al. v. Holum, supra; Patten v. Green, 369 N.W.2d 105 (N.D.1985). Although we conclude that Odden is entitled to have the

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moratorium on his civil jury trial lifted, we believe that he will receive this remedy in the district court without the requested writ.

[2] The issue in this case is whether a moratorium on all civil jury trials for the balance of the 1989-1991 biennium, imposed for budgetary reasons, is constitutional.

Article 1, Sec. 13, N.D. Const., provides, in relevant part:

"The right of trial by jury shall be secured to all, and remain inviolate."

The Seventh Amendment of the United States Constitution provides:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States than according to the rules of the common law."

Although the Seventh Amendment is not applicable to state court proceedings under the Fourteenth Amendment [Minneapolis & St. Louis R.R. Co. v. Bombolis, 241 U.S. 211, 36 S.Ct. 595, 60 L.Ed. 961 (1916); Runia v. Marguth Agency, Inc., 437 N.W.2d 45 (Minn.1989)], both our state and the federal constitutional provisions preserve the right to trial by jury in those cases which historically were subject to trial by jury at common law. Landers v. Goetz, 264 N.W.2d 459 (N.D.1978).

In Landers, supra, 264 N.W.2d at 462, this court compared the scope of the right to a jury trial under both the federal and state constitutions:

"In the State Constitution, it is the right to the essential incidents of trial by jury as it existed in the Territory of Dakota which remains inviolate. Power v. Williams, 53 N.D. 54, 205 N.W. 9 (1925); Smith v. Kunert, 17 N.D. 120, 115 N.W. 76 (1908). There is no real difference between the Federal constitutional right and the right under Territorial law, since the latter was the same as the right at common law and under the United States Constitution. Power v. Williams, supra."

Both Landers v. Goetz, supra, and Power v. Williams, supra, indicate that the state and federal constitutional provisions guaranteeing the right to a jury trial in civil actions are similar in scope and protect the same constitutional rights. See also General Electric Credit Corp. v. Richman, 338 N.W.2d 814 (N.D.1983) [North Dakota has a high regard for the right to a jury trial in civil cases and has been more liberal than most states in construing that right].

We have found no North Dakota cases dealing with Article I, Sec. 13, N.D. Const., in a context similar to this case and the parties have cited none. However, the Ninth Circuit Court of Appeals has held that a blanket moratorium on civil jury trials, imposed for a lack of adequate funds, violates the Seventh Amendment. Armster v. United States District Court, 792 F.2d 1423 (9th Cir.1986). See also Hobson v. Brennan, 637 F.Supp. 173 (D.D.C.1986).

In Armster, supra, the Administrative Office of the United States District Courts and the Executive Committee of the Judicial Conference advised all of the Federal District Courts that, as a result of a budgeting crisis, a blanket moratorium on the ***709** civil jury trial system for three and one-half months was required. A group of plaintiffs in civil cases which were pending in the District Court for the Central District of California and for the District of Alaska petitioned for an emergency writ of mandamus to prohibit those two district courts from suspending civil jury trials because of the alleged insufficiency of funds.

The Justice Department noted that the Sixth Amendment guarantees a speedy criminal trial whereas the Seventh Amendment does not guarantee a speedy civil trial and argued that the Seventh Amendment does not guarantee that a civil jury trial must take place at a particular time. In support of its argument, the Justice Department asserted that civil jury trials are frequently postponed and rescheduled for reasons other than lack of funds, including calendar congestion, lack of sufficient number of judges, and the priority accorded to criminal cases. The Justice Department argued that the blanket moratorium therefore did not violate the petitioners' Seventh Amendment rights.

The Court of Appeals rejected the Justice Department's argument, noting that it was not confronted with a good faith discretionary calendaring delay which implicates no Seventh

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Amendment rights, but with a wholesale non-discretionary suspension of the civil jury trial system and a blanket moratorium on all civil jury trials. Relying on United States Supreme Court caselaw that the right to a jury trial in civil cases under the Seventh Amendment is so fundamental and sacred that any seeming curtailment of that right should be rigorously scrutinized [Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 79 S.Ct. 948, 3 L.Ed.2d 988 (1959); Jacob v. City of New York, 315 U.S. 752, 62 S.Ct. 854, 86 L.Ed. 1166 (1942); Dimick v. Schiedt, 293 U.S. 474, 55 S.Ct. 296, 79 L.Ed. 603 (1935)], the Court of Appeals concluded that the blanket moratorium on civil jury trials for a significant period of time violated the petitioners' Seventh Amendment rights:

"[T]he availability of constitutional rights does not vary with the rise and fall of account balances in the Treasury. Our basic liberties cannot be offered and withdrawn as 'budget crunches' come and go, nor may they be made contingent on transitory political judgments regarding the advisability of raising or lowering taxes, or on pragmatic or tactical decisions about how to deal with the perennial problem of the national debt. In short, constitutional rights do not turn on the political mood of the moment, the outcome of cost/benefit analyses or the results of economic or fiscal calculations. Rather, our constitutional rights are fixed and immutable, subject to change only in the manner our forefathers established for the making of constitutional amendments. The constitutional mandate that federal courts provide civil litigants with a system of civil jury trials is clear. There is no price tag on the continued existence of that system, or on any other constitutionally-provided right.

* * * * * *

"[T]he civil jury trial system may not be suspended for lack of funds. Specifically, we conclude that the seventh amendment right to a civil jury trial is violated when, because of such a suspension, an individual is not afforded, for any significant period of time, a jury trial he would otherwise receive. We do not suggest that a suspension of any duration whatsoever would be constitutional. We need only decide here that a suspension for a significant period is barred by the seventh amendment." Armster, supra, 792 F.2d at 1429-1430.

Although the Court of Appeals concluded that a blanket moratorium on civil jury trials for three and one-half months was for a significant period of time and was unconstitutional, it did not issue a writ of mandamus because it was "confident" that the district court judges would "act in light of the principles set forth" in the decision. Armster, supra, 792 F.2d at 1431.

We find the rationale of Armster, supra, to be persuasive to the extent that it prohibits a blanket moratorium on civil jury trials for a significant period of time. Under the circumstances of this case, we need not decide whether a three and one-half ***710.** month delay of civil jury trials is unconstitutional. We hold only that the Northeast Judicial District's blanket moratorium on civil jury trials, for budgetary purposes, through the balance of the biennium, a period of about eighteen months, is a significant period of time and violates Odden's state constitutional right to a civil jury trial.

We are confident that the judges in the Northeast Judicial District will act in light of the principles set forth in this decision. Consequently, we deny Odden's petition, without prejudice.

The application for a supervisory writ is denied.

FN1. In anticipation of a substantial revenue shortfall the Supreme Court requested the presiding judge of each judicial district to accommodate a 9.1% cut in funding for the remainder of the 1989-1991 biennium. In a meeting of the council of Presiding Judges, held on December 18, 1989, Judge O'Keefe indicated that a reduction of jury expenses would be part of his budget cuts:

"Jury expenses will be cut by 51%--speedy trial would be given on criminal cases and civil cases would be delayed indefinitely."

This court ultimately adopted a budget reduction package for the unified judicial system and forwarded a narrative of the anticipated budget cuts to the Office of Management and Budget, including the following description of anticipated cuts in the operating expense line item for the district courts:

"The major part of reductions in operating expense would center in the cost of juries and indigent defense services. Sharp reductions in District Court travel and law libraries will be implemented.

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As a result, considerable slowing in the pace of jury trials will result. We would seek to avoid impact on criminal jury trials."

Subsequently, in implementing the budget reductions for his district, Judge O'Keefe imposed a blanket moratorium on civil jury trials for the remainder of the biennium, a period of approximately eighteen months. This petition constitutes the first instance in which this court has been asked to consider the constitutionality of a blanket moratorium on civil jury trials.

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February 8, 1999

HOUSE JUDICIARY COMMITTEE
HCR 3017

CHAIRMAN DEKREY AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing today on behalf of the The North Dakota Trial Lawyers Association. We **OPPOSE** this bill.

The right to a jury trial is one of the bedrock rights of all citizens. It is not to be taken lightly. To simply take it away in certain, so-called minor cases for reasons of economy is not justified. To the people involved these are not minor matters.

We strongly, but respectfully urge that you give this resolution a **DO NOT PASS.** I'll be happy to answer any questions. THANK YOU FOR YOUR TIME AND CONSIDERATION.

Chairman ~~DeKrey~~ Stenehjem and members of the ~~House~~ Senate Judiciary Committee:

For the record I am State Representative Stacey L. Mickelson and I represent District 38 which comprises the Northwest corner of the city of Minot, the city of Burlington, one-half of the MAFB and 5 rural townhips of Ward County.

After court unification, whereby the North Dakota Legislature mandated there be a maximum number of district court judges of 42 by the year 2000-2001, a study by the National Judicial Center (NJC) released in January of 1998 said the number 42 is workable. Yet many in the state have said that the number is too low and that access to the courts was delayed and even slow when more judges were sitting before unification.

One way to help move these cases through the system faster (and still provide full due-process allowed under the US Constitution) is to amend Article I, Sec. 13 of the North Dakota Constitution on the right to jury trial in criminal cases so that it tracts the federal right to jury trial. This constitutional change to Article I, Sec. 13 of the North Dakota Constitution would remove the right to jury trials for crimes punishable up to 6 months. These are typically Class 'B' Misdemeanors such as simple assault (domestic violence) and DUI offenses.

The United States Constitution does not guarantee a person right to jury trial, if that person would be serving six months or less in jail. There are several United State's Supreme Court Cases included here to back that up. I have also included from the National Conference of State Legislatures (NCSL) information on the states that currently track this portion of the US Constitution into their state constitutions.

In Codispoti (1974) and Blanton (1989), the United State's Supreme Court continued to recognize that there are 'petty' crimes and 'serious' crimes. Those crimes that carry a sentence of 6 months incarceration or less are 'petty' crimes under that ruling. In North Dakota Class 'B' Misdemeanors would be considered 'petty' under the US Supreme Court definition (see Baldwin v. New York{1970}, attached).

Often times if a person is charged with a Class 'B' Misdemeanor in North Dakota that person does not serve any jail time. Yet the ND Constitution currently guarantees the right to jury trial for all offenses that would carry a sentence requiring possible jail time. This is a guarantee regardless of whether or not the State intends to reccomend jail time even if the person is found guilty. The impending result of such action is that the ND court system is jammed and clogged up with jury trials for matters that the federal constitution views to be 'petty' crimes and where a person is not at significant risk of losing their freedom.

In Ward County, it costs the state (not the county) approximately $1,000 to bring in a jury on a 'petty' crime trial. In the beginning of February 1999, there were just over 52 Class "B" Misdemeanor trials scheduled for some 25 trial dates between February and May 1999 in Ward County District Court. Many of the 52 are transfers from the Municipal Courts in Burlington and Minot. That is a cost to the state of $25,000 (25 dates X $1,000) on 'petty' crimes in just the

next four months for jury trials not guaranteed under the US Constitution. Keep in mind that Ward County is ND's fourth most populated county.

The problem for Ward County, and most other counties I suspect, is that many defendants and their counsel push for a jury trial, effectively stalling justice and buying time. Between the pre-trial conference and the actual week of the trial, which is generally about 6 months, a good majority of the defendants plead and cut deals - many of them doing so the actual week of the trial. This action makes all of the hard work of the court adminstrators, the state's attorneys and the judges wasted, not to mention the financial resources.

The Ward County Clerk of District Court sends out 30 juror notices for each Class "B" Misdemeanor trial date, requiring the attendance of the selected to appear for jury duty. Each person in the jury pool remains there until they have either served as a juror or have received three notices. If you have ever been summoned for this duty, however necessary in our form of justice, you know that it can be at best an inconvenience - not to mention the burden on many employers who lose valuable employees for days on end, to trials that are considered 'petty' under the US Constitution.

This amendment would bring the ND Constitution more into line with the US Constitution; this amendment in no way removes the rights of ND citizens guaranteed under the US Constitution; and, this amendment is meant to make the 42 District Judge requirement workable for the public while prioritizing ND's scarce judicial resources. The real issue now becomes one of accessibility for people to come before the court to be heard in both civil and criminal actions. We need also to think of the victims of simple assault who deserve to have cases resolved quickly so as to put terrible events behind them.

Generally, the State and the Defendant have a right to a speedy trial. However, when these cases block and log-jam the system, society loses. When these cases do come before the court witnesses may not remember a particular event as clearly six and seven months out as they would two to three months from the time the crime took place. This is a very big roadblock to personal crime cases where the defendant and victim know each other, as in simple-assault domestic violence cases. This long delay allows a defendant more opportunity to "work over" a victim/witness so there is a greater chance of recanting. Also, with these delays, witnesses may move out-of-state before the matter comes to trial, therefore costing the State more money in returning them to the jurisdiction of the court.

With the jury trial calendar backed up, the victims of crimes such as simple-assault, theft of property, and criminal mischief, ultimately have to suffer longer before justice is served. Defendants committing domestic violence are usually charged with Class "B" Misdemeanor simple-assault. Under the present system providing jury trials, domestic situations are not being resolved in a quick and efficient manner and the problems causing the domestic situation are not being addressed until six and seven months down the road.

This amendment recognizes that there is a limit to public resources and prioritizes how the funds appropriated would be utilized. The North Dakota Constitution guarantees many rights to

criminal defendants. Among these guarantees are the right to legal counsel, one appointed at State expense if they can not afford one, and the right to jury trial. However, there is an exception to these rights. If the State does not intend to recommend that the defendant serve any jail time, or if the Court does not intend to sentence a defendant to serve any jail time, the defendant does not have the right to Court-appointed legal counsel. The right to jury trial does not have this exception. Currently, the right to jury trial is given to a criminal defendant regardless of whether or not the defendant will be sentenced to serve any actual jail time. This needs to be changed as the US Constitution and several other states provide. In closing, I urge you to remember that even if we as a legislative body pass this resoultion, we still have to defer to the wisdom of the people of the Great State of North Dakota who would ultimately decide the fate of this measure.

March 8, 1999

SENATE JUDICIARY COMMITTEE
HCR 3017

CHAIRMAN STENEHJEM AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing today on behalf of the North Dakota Trial Lawyers Association. We **OPPOSE** this bill.

The right to a jury trial is one of the bedrock rights of all citizens. It is not to be taken lightly. To simply take it away in certain, so-called minor cases for reasons of alleged judicial economy or backlog is not justified.

This basically involves first offenses for driving under the influence, driving under suspension and NSF check charges. These may be minor offenses that are just bothersome to the states attorneys, who have so many other major crimes to handle each day, but...as a lawyer who has been in private practice for 29 years...I can vouch to you that to the people involved these are not minor matters. These can be devastating charges.

If they are innocent, they don't want to plea bargain! If there is some question about the charges, they should have as much of a right to trial by a jury of their peers as the person charged with assault, robbery, murder or any number of white collar crimes.

Where's the hue & cry for this legislation? There are no judges here today saying this is needed. There are no court administrators, no county commissioners, no citizen groups. If the lawyers and the courts are so inconvenienced by these bothersome Constitutional rights, then where are their organizations testifying for this bill? No, we just have state's attorneys who want to make these so-called minor charges more of an assembly line operation so that they won't have to be bothered with these inconvenient Constitutional jury trials.

Granted, other states may not allow jury trials in these instances. There are many, many areas where North Dakota differs from other states. That's what makes us unique and proud to be North Dakotans. We don't need to follow all the other states. Texas executes 25-30 people a year. Should we follow suit?

We strongly, but respectfully, urge that you give this resolution a **DO NOT PASS.** I'll be happy to answer any questions. THANK YOU FOR YOUR TIME AND CONSIDERATION.

Mr. Chairman and Other Members of the Committee:

Because I have other obligations, I am not able to attend personally and speak against House Concurrent Resolution 3017.

I certainly believe it's important, however, that this Committee recommend a "Do Not Pass" on this piece of legislation.

The people of North Dakota have had the right to a trial by a jury, guaranteed by Article I § 13 of the North Dakota Constitution, since 1889.

It appears now that certain members of the Legislature wish to deprive us of that right simply to save money.

The end result of that, of course, is that a person who has a quibble with her hair dresser over the result of a permanent has the right to go to a jury trial to get that resolved. A person whose neighbor's dog is defecating on his lawn can go to a jury trial for resolution of that matter. The merchant who feels he's owed $50.00 by a customer can go to a jury to get that matter resolved.

However, somebody facing up to six months in jail, thousands of dollars in fines, possible loss of driving privileges and thereby loss of employment, possible registration as a sex offender, possible conditions of probation which might include paying restitution in the amount of thousands of dollars, attending various incendiary counseling classes, performing hundreds or even thousands of hours of community service, is to be deprived of the right to have a jury of his peers determine his guilt or innocence.

That suggestion is abominable.

I read recently in the newspaper where John Mahoney has indicated that most people sentenced under statutes for which the maximum penalty is less than six months, are not given jail time.

That is at best a half truth and at worst a total misrepresentation of what is actually taking place.

I have attached hereto a copy of the court reports from the *Bismarck Tribune* for Sunday, March 7, 1999.

The two courts who's sentencings are reported are the Bismarck Municipal Court and the Mandan Municipal Court.

Because neither of those courts has jurisdiction beyond thirty days, it is clear that all of the criminal cases which those courts deal with would fall under the proposed denial of the right to trial by jury.

Judge William Severin sentenced everybody convicted of Driving Under the Influence to jail time. In each case, the jail time was suspended. In cases of Driving Under Suspension, all that were convicted got jail time of which approximately half of them received actual time and the other half suspended time.

Of those convicted of Driving Without Liability Insurance, all got jail time, two out of five of them had to serve it.

Of those convicted of Theft, all got jail time, one suspended and one having to serve the time.

In Mandan City Court, Judge Brian Giese sentenced nobody who was convicted of Driving Without Liability Insurance at all, however, for those charged with Driving Under Suspension, all but one got actual jail time. The one convicted of Theft got actual jail time. The ones convicted of Minor in Possession all got actual jail time. There was one DUI who got suspended jail time. One Assault who got actual jail time, and two convicted of Simple Assault/Disorderly Conduct, both of whom got actual jail time.

So the actual fact of the matter is, at least according to this news release, the people who are convicted of criminal acts, almost all received jail time. About half of it is suspended and the other half is actually ordered to be served.

Now once somebody has received a sentence of suspended jail time, the judge can revoke that suspension without proof beyond a reasonable doubt of the violation for something as simple as not performing community service or not paying restitution. In that case, the individual is exposed to actual time and even at the present, has no right to a jury trial and has only to be shown to have violated beyond a preponderance of the evidence.

To deprive all of these people, and all of the citizens of North Dakota of the right to the protection of a jury is simply disgusting.

I have been a practicing lawyer for almost 22 years. In that period of time, I have know many judges. Some of them very good and fair and some of them downright awful. There are no qualifications to be a judge in North Dakota other than having been licensed to practice law and being the most popular candidate in an election, or the most popular candidate for the Governor to appoint.

Of all the judges I have dealt with in this state, I believe there are probably two that I would trust to be as fair in analyzing evidence and rendering a verdict as a jury would be.

The greatest majority of our judges appear to graduate from being state's attorneys, assistant state's attorneys, or assistant attorney generals, to county judges previously and now district judges.

These former prosecutors have, of course, developed an attitude toward those accused of a crime, just as defense attorneys have developed the opposite attitude.

I am aware of only one judge in this judicial district who has spent any time at all as a defense attorney. At least two of our judges have never been anything but prosecutors and judges.

I am sure that the rest of the state has similar statistics.

It appears that the promoters of this Bill want to essentially create a closed system where the police arrest, the prosecutor prosecutes, and the judge convicts, and nobody like a jury and citizens has the opportunity to interfere.

I strongly urge this committee to unanimously recommend a "Do Not Pass" to House Concurrent Resolution 3017.

Ralph A. Vinje, Lawyer

THS

ALEXIUS
ICAL CENTER

AUGHTER, Paul and Marie elmeier, Bismarck, 4:32 a.m., h 6.

N, Dean and Dawn Friedt, 4:59 a.m., March 6.

AUGHTER, Donna Belgarde ean Gillis, 1112 Bozeman Dr. Bismarck, 3:18 p.m., March

ME STOPPERS

Bismarck Area Crime Stop- at 224-TIPS (224-8477) to re- formation about any crime in rck, Mandan, Burleigh Coun- Morton County. Information e given anonymously and ay be eligible for cash re- if the information leads to an

RT POLICY

Tribune publishes For The court sentences from Dis- ourt in Burleigh and Morton s, marck Municipal nd n Municipal Court ndar ceive a fine of at 100 or a jail term, whether ded or not.

RTS

RCK

WILLIAM C. SEVERIN

ING UNDER THE INFLU- Ricky L. Chenoweth, 30, win City Drive, Mandan, $300, seven days suspended for one year. Brian J. Smith, 22, 1571 N. 12th St. No. 6, Bismarck, $300, seven days suspended for one year. Keith G. Bendickson, 42, 110 E. Ave. C, Bismarck, $300, seven days suspended for one year, also DRIVING UNDER SUSPENSION: $200 and five days, four days suspended for one year. John R. Red Ears, 41, 2316 E. Broadway Ave. No. 8, Bismarck, $300, seven days suspended for one year, also DRIVING UNDER SUSPENSION: 10 days, six days suspended for one year. Paulette R. Holy Bear, 47, 1130 W. Owens Ave. No. 103, Bismarck, $300, seven days suspended for one year, also DRIVING UNDER SUSPENSION: $175, three days suspended for one year. Branden E. Savenko, 18, 1321 E. Harmon Ave., Bismarck, $300, seven days suspended for one year. Scott T. Seewalker, 33, Fort Yates, $500 and 20 days, 15 days suspended for one year, also DRIVING UNDER SUSPENSION: 20 days, 15 days suspended for one year.

RESTRICTED LICENSE: Amanda B. Kiefer, 16, 2512 Stevens St., Bismarck, $100.

DRIVING UNDER SUSPENSION: Timothy M. Downes, 20, 102 S. Meadow Lane, Mandan, $175, three days suspended for one year. Michelle L. Harrison, 19, Fort Yates, $175, three days suspended for one year, also NO LIABILITY INSURANCE: $150, five days suspended for one year. Charles M. Winn, 19, 517 E. Interstate Ave., Bismarck, $150, three days suspended for one year.

NO LIABILITY INSURANCE: Emily L. Catches, 33, 407 N. 15th St., Bismarck, $150 and 20 days, 10 days suspended for one year. Russell Bordeaux, 40, 706 W. Arbor Ave., Bismarck, $150 and five days. Delilah M. Wedmore, 46, 630 S. Washington St. No. 36, Bismarck, $150, five days suspended for one year. Bradley K. Clown, 38, 308 S. 15th St., Bismarck, $150, five days suspended for one year. Colette F. Rosebud, 31, 2801 Hawken St. No. 2, Bismarck, $150, five days suspended for one year.

FAIL TO YIELD TO PEDESTRIAN: Brent M. Jungling, 17, 3835 Renee Drive, Bismarck, $100.

SPEEDING (26 mph or more over the posted limit): Mitchell R. Lennick, 17, 707 18th St. N.W., Mandan, $127.

THEFT OF PROPERTY: Evette Seewalker, 18, 706 W. Arbor Ave., Bismarck, $250, three days suspended for one year. Bethel J. Crawford, 18, Sisseton, S.D., three days.

MANDAN

JUDGE BRYAN L. GIESE

NO LIABILITY INSURANCE: Tammie M. Lang, 37, 818 Poplar St., Mandan, $150. Eric J. Frederick, 23, Belcourt, $150. George W. Gipp, 42, 1010 First St. S.E., Mandan, $300, $100 suspended for one year. Jeff L. Burkart, 20, 2029 Union Loop, Mandan, $150. Alex F. Spotted Elk, 20, Cannon Ball, $150. Miranda Scherr, 18, 1403 Second Ave. N.W. No. 1, Mandan, $150. Lawrence D. Naegle, 52, 3028 Twin City Drive, Mandan, $150.

DRIVING UNDER SUSPENSION: Thane L. Schumacher, 17, 5500 63rd St. N., Mandan, first count: $250 and 20 days, 18 days suspended for one year, second count: $300 and 10 days, $100 and eight days suspended for one year, jail time served consecutive. Kenneth L. Eagle, 39, Cannon Ball, $100 and 10 days, 6½ days suspended for one year, also NO LIABILITY INSURANCE: $150 Shana L. Berger, 23, 900 Adob Trail No. B4, Mandan, $150, $7 suspended for one year.

THEFT OF PROPERTY: William Left Hand, 37, Fort Yates, $200 and four days, $150 and one day suspended for one year.

MINOR IN POSSESSION: Trevor J. Sayler, 20, 204 Fourth Ave. N.W., Mandan, $300 and 10 days, $100 and eight days suspended for one year. Anthony J. Felix, 20, Garrison, $350 and five days, $100 and three days suspended for one year. Jewel A. Felix, 18, Garrison, $250 and three days, $100 and one day suspended for one year, also NO LIABILITY INSURANCE: $150.

DRIVING UNDER THE INFLUENCE: Tara A. Schlosser, 19, 2413 N. Eighth St. No. 9, Bismarck, $350, $100 and 10 days suspended for one year.

SIMPLE ASSAULT: Chad M. Alyea, 26, 103 W. Buffalo St., Mandan, $350 and 20 days, $100 and 18 days suspended for 18 months.

SIMPLE ASSAULT/DISORDERLY CONDUCT: Steve G. Leintz, 39, 1605 12th Ave. S.E., Mandan, $250 and five days, $100 and four days suspended for one year. William J. Neva, 51, 311 13th St. N.W., Mandan, $200 and five days, $100 and one day suspended for one year.

BEG YOUR PARDON

If you spot an error that significantly changes the meaning of any Tribune news story, please call the metro editor at 223-2500, ext. 251 or 225.

FUNERALS TODAY

ANASTACIA SODERQUIST, 79, Wilton, 2 p.m., First Presbyterian Church, Wilton. (Goetz Funeral Home, Wilton)

TO: SENATE JUDICIARY MEMBERS
FROM: CHAD R. MCCABE, ATTORNEY
RE: HOUSE CONCURRENT RESOLUTION 3017
DATE: MARCH 8, 1999

Mr. Chairman and members of the Senate Judiciary Committee:

I urge you to defeat House Concurrent Resolution 3017. In effect, this resolution sweeps away the fundamental constitutional right to a jury trial provided by our founding fathers of North Dakota, and approved by the people of North Dakota.

It is troubling indeed, to consider the consequences of the proposed constitutional amendment. The long established view that one has a right to a trial of his or her peers when charged with a crime is the backbone of our state and country.

Freedom is what our state and country were founded upon. The statute of liberty sits in New York as a symbol of this freedom. The first family sits in front of the North Dakota State Capitol as a symbol of this freedom. We have had war after war fighting for and preserving this freedom. Blood from Thousands of North Dakotans has been shed for this freedom.

What is freedom? It is freedom from government oppression. It is the right to be presumed innocent, with the government having the burden of proving us guilty beyond a reasonable doubt. It is the right to a select a nonbiased and neutral jury of our peers who shall determine our guilt or innocence. Taking away the right to a jury trial robs us of this freedom, and we then become like the countries we have fought so hard not to be like.

The apparent reason for HB 3017 is that class B misdemeanors are cluttering up the judicial system, and as a result, civil cases are being backlogged. Is there a loss of liberty in civil cases? No. Is there a loss of freedom in civil cases? No. Are we going to take away the right to a jury trial in criminal cases, and yet preserve the right to a jury trial in civil cases, where one could sue on the pettiest of actions? There are countless class B misdemeanors within the North Dakota Century Code where one faces incarceration and fines. Our citizens charged with such crimes deserve the right to be heard by a nonbiased and neutral jury of our peers.

I hope and pray that this committee will defeat HB 3017.

Chad R. McCabe
523 North Fourth Street
Bismarck, ND 58501

CHAPTER 2. TRIAL WITHOUT JURY

Article
779. Trial of misdemeanors.
780. Right to waive trial by jury.
781. Charges in cases tried without a jury.

Law Review and Journal Commentaries

Work of appellate courts, 1969-1970. Dale E. Bennett, 31 La.L.Rev. 370 (1971).

Art. 779. Trial of misdemeanors

A. A defendant charged with a misdemeanor in which the punishment, as set forth in the statute defining the offense, may be a fine in excess of one thousand dollars or imprisonment for more than six months shall be tried by a jury of six jurors, all of whom must concur to render a verdict.

B. The defendant charged with any other misdemeanor shall be tried by the court without a jury.

Amended by Acts 1968, No. 635, § 1; Acts 1974, Ex.Sess., No. 23, § 1, eff. Jan. 1, 1975; Acts 1975, Ex.Sess., No. 16, § 1, eff. Jan. 28, 1975; Acts 1979, No. 56, § 1; Acts 1986, No. 852, § 1, eff. July 10, 1986; Acts 1988, No. 202, § 1.

Official Revision Comment

(a) This article is merely a stylistic revision of former R.S. 15:340.

(b) The term "misdemeanor" is defined in Art. 933(4); therefore, the definition contained in former R.S. 15:341 is not retained in the above article. See also, the definition of "misdemeanor" in R.S. 14:2

Historical and Statutory Notes

Source:

Former R.S. 15:340; Const.1921, Art. I, § 9, Art. VII, § 41.
Acts 1966, No. 310, § 1.

The 1968 amendment rewrote the article, which previously read: "A defendant charged with a misdemeanor shall be tried by the court without a jury."

Acts 1968, No. 635, § 3 provided as follows: "Upon the effective date of this act [July 31, 1968 at noon] it shall govern all prosecutions regardless of when the offence was committed."

The 1974 amendment by Acts 1974, Ex.Sess., No. 23 rewrote the article, which previously read:

"A defendant charged with a misdemeanor in which the punishment may be a fine in excess of five hundred dollars or imprisonment for more than six months shall be tried by a jury of five jurors, all of whom must concur to render a verdict; provided, however that a defendant charged with such an offense may waive a trial by jury and elect to be tried by the court.

"A defendant charged with any other misdemeanor shall be tried by the court without a jury."

As amended by Acts 1974, Ex.Sess., No. 23, this article read:

"A. A defendant charged with a misdemeanor in which the punishment, may be a fine in excess of five hundred dollars or imprisonment for more than six months shall be tried by a jury of six jurors, five of whom must concur to render a verdict.

"B. The defendant charged with any other misdemeanor shall be tried by the court without a jury.

"C. A defendant charged with the commission of an offense alleged to have been committed prior to midnight December 31, 1974 shall, except as hereinafter provided, be tried in accordance with the jury provisions applicable at the time of the commission o the offense. Prior to the commencement of trial in such cases, the

Title 2 -- Aeronautics

ND CODE 2-03-10 Tampering with aircraft--Misdemeanors--Penalties
ND CODE 2-04-12 Enforcement and remedies – Airport Zoning violations
ND CODE 2-05-18 License for aerial spraying--Regulations--Penalties
ND CODE 2-08-11 Penalty for violation of chapter – Failure to maintain records, etc., or obtain license to sell aircraft

Title 4 -- Agriculture

ND CODE 4-10.1-15 Misdemeanor to violate provisions of this chapter – Potato Industry Promotion Act – assessments
ND CODE 4-10.2-11 Penalty – Oilseed Industry Promotion -- assessments
ND CODE 4-10.3-11 Penalties – Dry Bean Industry Promotion -- assessments
ND CODE 4-10.4-14 Penalty – Barley -- assessments
ND CODE 4-10.5-14 Penalty – Soybean Council -- assessments
ND CODE 4-10.6-16 Penalty – Corn Industry Promotion -- assessments
ND CODE 04-10.7-17 Penalty – Dry Pea and Lentil Council -- assessments
ND CODE 4-12.1-09 Penalty – Honey Promotion Act
ND CODE 4-13.1-13 Penalty – Turkey Promotion Act
ND CODE 4-14-10 Contracts void, penalty – Discrimination in Purchase of Farm Products
ND CODE 4-21.1-16 Penalties--Criminal--Civil--License revocation or nonrenewal – Nurseries and Nursery Stock – misrepresenting the name, age, origin, grade, variety, quality, or hardiness of any nursery stock -- sell or offer for sale any nursery stock not labeled in accordance with the international code of nomenclature for cultivated plants with the complete correct botanical or approved recognized common name. All nonhardy trees and shrubs, as designated by the commissioner, must be labeled with the statement "nonhardy in North Dakota". All nursery stock offered for sale or distribution must be in a viable condition and must be stored and displayed under conditions that will maintain its viability. Materials used to coat the aerial parts of the plant that change the appearance of the plant surface so as to prevent adequate inspection are prohibited.
ND CODE 4-24-06 Sale of chemically treated grain—Misdemeanor -- No person may sell grain, for the purpose of human or animal consumption, which has been chemically treated for insect or fungus control, without informing the purchaser of the fact of such treatment.
ND CODE 4-25-03 Penalty – Seed Sales Regulations -- to accept full or partial payment in connection with the sale of any agricultural seeds to be delivered to the buyer at a later date, unless each and every transaction is accompanied by a written sales agreement or contract which must contain thereon the following provisions:

1. The date and place of the transaction.
2. The signature and address of the buyer and the seller or the agent acting for the seller.
3. The number of units and the price per unit.
4. The total value of the transaction.
5. The total amount of the full or partial payment made to the seller by the buyer.
6. The kind and variety of seed for wheat, durum, barley, oats, rye, flax, soybeans, and edible beans.

7. The class of the seed to be delivered, and if the seed is not certified, then the minimum germination and seed purity percentages must be stated. If the seed is certified, the words "breeders", "foundation", "registered", or "certified", as the case may be, must be shown.
8. The date of delivery or the latest date at which delivery is to be made.
9. The place of delivery.
Any provision in any written order or contract, which is contrary to any of the provisions of this section hereby is declared to be against public policy and void.
ND CODE 4-26-12 Penalty – Seed Potato Act -- No person may plant or permit to be planted on any lands of which he is the owner or lessee within a seed potato control area, or within any part thereof, any seed of a quality other than that prescribed or authorized under this chapter, and only uniform North Dakota certified seed potato tags be used. No owner or lessee in a seed potato control area may ship potatoes out of the area without first obtaining a permit from the committee and paying the fee as fixed by the provisions of this chapter.
ND CODE 4-27-12 Penalty—Dairy Promotion Commission – Assessments and maintenance of records
ND CODE 4-28-09 Penalty – Wheat Commission – reporting requirements
ND CODE 4-30-53 Penalty for violation of chapter--Additional civil penalty--Failure to pay civil penalty – Dairy Productions Regulation – farm certification, transportation, standards/grading, labeling, sales, testing of dairy products and record keeping
ND CODE 4-34-10 Remittance of assessments collected—Penalties – Beef Promotion Act – Any licensed dealer, selling agency at terminal markets, auction markets, or any other person required to remit assessments but who fails to remit the assessments as required by this chapter within thirty days following the month in which the cattle were sold is guilty of a class B misdemeanor. Any licensed dealer, owner or operator of a selling agency at a terminal market, livestock auction market operator or any other person required to collect assessments but who fails to collect assessments as required by this chapter is guilty of a class B misdemeanor. Any person who sells cattle from the state of North Dakota outside the state or to an out-of-state buyer who fails to remit the assessments required by this chapter within thirty days following the month in which the cattle were sold is guilty of a class B misdemeanor.
ND CODE 4-35-23 Penalties – Pesticide Act -- No person may discard, store, display, or permit the disposal of surplus pesticides, empty pesticide containers and devices, or pesticide rinsate in such a manner as to endanger the environment or to endanger food, feed, or any other products that may be stored, displayed, or distributed with such pesticides. Each of the following acts is a violation of this chapter, whether committed by an applicant, holder of certification, or any other person applying or using pesticides, if the person:

1. Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or advertised a pesticide without reference to its classification.
2. Made a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board.
3. Applied materials known by that person to be ineffective or improper.
4. Operated faulty or unsafe equipment.
5. Operated in a faulty, careless, or negligent manner.
6. Neglected, or, after notice, refused to comply with the provisions of this chapter, the rules adopted hereunder, or of any lawful order of the commissioner.
7. Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required.
8. Made false or fraudulent records, invoices, or reports.
9. Operated unlicensed equipment in violation of section 4-35-17.
10. Used fraud or misrepresentation in making an application for, or for renewal of, certification.
11. Refused or neglected to comply with any limitations or restrictions on or in a duly issued certification.

12. Aided or abetted a certified or an uncertified person to evade the provisions of this chapter, conspired with such a certified or an uncertified person to evade the provisions of this chapter, or allowed the person's certification to be used by another person.
13. Knowingly made false statements during or after an inspection.
14. Impersonated any federal, state, county, or city inspector or official.
15. Distributed any restricted use pesticide to any person who is required by law or rule to be certified to use or purchase such restricted use pesticide unless such person or his agent to whom distribution is made is certified to use or purchase that kind of restricted use pesticide.

16. Bought, used, or supervised the use of any restricted use pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted therefrom.
17. Applied any economic poison which is not registered pursuant to the provisions of chapter 19-18.
ND CODE 4-38-05 Violations--Ineligibility--Reporting of violations – Organic Food Standards -- Any person who knowingly sells or labels a product as organic, except in accordance with this chapter, is guilty of a class B misdemeanor

Title 5 – Alcoholic Beverages

ND CODE 5-01-08 Persons under twenty-one years of age prohibited from manufacturing, purchasing, consuming, or possessing alcoholic beverages or entering licensed premises--Penalty--Exceptions--Referrals to addiction facilities
ND CODE § 5-01-08.1 Misrepresentation of age--Penalty--Licensee may keep book
ND CODE § 5-01-10 Bottle clubs prohibited—Penalty
ND CODE § 5-01-11 Unfair Competition -- A manufacturer may not have any financial interest in any wholesale alcoholic beverage business. A manufacturer or wholesaler may not have any financial interest in any retail alcoholic beverage establishment and may not furnish any such retailer with anything of value. A retailer may not have any financial interest in any manufacturer, supplier, or wholesaler.
ND CODE § 5-01-15 Penalty (for violations of previous subsections)
ND CODE § 5-02-01.1 Event permit authorized—Penalty – Retail Licensing -- Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a permit is guilty of a class B misdemeanor
ND CODE § 5-02-07.1 Sale of alcoholic beverages in exchange for goods prohibited --Any licensee engaged in the retail sale of alcoholic beverages who accepts goods, chattels, or other tangible personal property, other than money, checks, legal tender, negotiable instruments, or other evidences of debt, in exchange for any alcoholic beverages is guilty of a class B misdemeanor
ND CODE § 5-03-01 State wholesale license required--Qualifications--Penalty--Exception
ND CODE § 5-03-01.2 Brand registration--Penalty

Title 6 – Banks & Banking

ND CODE § 6-03-10 Violation of powers—Penalty – Failure of banks to get an appraisal before making a real estate loan and other limitations on bank's powers
ND CODE § 6-03-20 Impairment of capital--Notice to commissioner—Penalty -- The president, cashier, or other officer in active charge of any state banking association shall notify the commissioner immediately by certified mail of any impairment of capital or reduction of capital stock thereof, and any such

officer failing so to do is guilty of a class B misdemeanor
ND CODE § 6-03-60 Loans to and purchases from directors, executive officers, and principal shareholders--Restrictions--Conditions--Penalty--Civil liability
ND CODE § 6-03-61 Excessive loan--Validity--Penalty--Personal liability
ND CODE § 6-03-63 Interest on deposits--Rates payable--Penalty
ND CODE § 6-03-72 Certification of checks, drafts, and orders--Penalty
ND CODE § 6-08-09 Banking association officers--Punishment for violation of duty--Penalty
ND CODE § 6-08-11 Punishment for violation of duty by director of moneyed corporation--Penalty
ND CODE § 6-08-16 Issuing check or draft without sufficient funds or credit--Notice--Time limitation--Financial liability--Penalty

Title 7 – Building & Loan Associations

ND CODE § 7-02-06 Excessive collections and charges--Penalty
ND CODE § 7-03-09 Penalties in general -- Any director, officer, agent, or employee of any building and loan association knowingly violating, or knowingly permitting to be violated, any provision of this title the violation of which is not designated specifically in this title to be a crime, is guilty of a class B misdemeanor

Title 8 -- Carriage

ND CODE § 8-10-11 Interruption of telecommunications in kidnapping or hostage emergency--Duty of telecommunications company to assist--Prohibited communications--Penalty

Title 11 -- Counties

ND CODE § 11-18-02.2 Statements of full consideration to be filed with state board of equalization or register of deeds--Procedure--Secrecy of information--Penalty
ND CODE § 11-19.1-07 Death to be reported to coroner by physician or persons discovering body--Penalty--Notice to state health officer--Right to autopsy
ND CODE § 11-33-21 General penalties for violation of zoning regulations and restrictions -- A violation of any provision of this chapter or the regulations and restrictions made thereunder shall constitute the maintenance of a public nuisance and shall be a class B misdemeanor
ND CODE § 11-33.2-15 Penalty and remedies -- PEACE OFFICER STANDARDS, TRAINING AND LICENSING --

Title 12 – Corrections, Parole and Probation

ND CODE § 12-60-16.4 Criminal history record information--Reportable offenses
ND CODE § 12-63-14 Penalty

Title 12.1 – Criminal Code

ND CODE 12.1-06.1-07 Racketeering--Investigation of records--Confidentiality--Court enforcement--Classification
ND CODE 12.1-07-05 Penalty – flag desecration
ND CODE 12.1-08-04 Aiding consummation of crime
ND CODE 12.1-08-07 Public servants permitting escape
ND CODE 12.1-08-11 Fleeing a peace officer
ND CODE 12.1-10-04 Hindering proceedings by disorderly conduct
ND CODE 12.1-11-05 Tampering with public records
ND CODE 12.1-13-04 Impersonating officials
ND CODE 12.1-14-04 Discrimination in public places
ND CODE 12.1-14-05 Preventing exercise of civil rights--Hindering or preventing another aiding third person to exercise civil rights
ND CODE 12.1-17-01 Simple assault
ND CODE 12.1-17-07 Harassment
ND CODE 12.1-17-10 Hazing--Penalty
ND CODE 12.1-20-07 Sexual assault
ND CODE 12.1-20-08 Fornication
ND CODE 12.1-20-10 Unlawful cohabitation
ND CODE 12.1-20-12.1 Indecent exposure
ND CODE 12.1-21-03.1 Negligent act resulting in fire--Penalty
ND CODE 12.1-21-05 Criminal mischief
ND CODE 12.1-21-06 Tampering with or damaging a public service
ND CODE 12.1-21.1-04 Penalty – damage to animal research facility
ND CODE 12.1-22-03 Criminal trespass
ND CODE 12.1-23-05 Grading of theft offenses
ND CODE 12.1-23-07 Misapplication of entrusted property
ND CODE 12.1-23-08.4 Duplication of keys
ND CODE 12.1-23.1-01 Theft of cable television services--Penalty
ND CODE 12.1-24-05 Making or uttering slugs
ND CODE 12.1-25-03 Engaging in a riot
ND CODE 12.1-25-04 Disobedience of public safety orders under riot conditions
ND CODE 12.1-27.1-03.1 Objectionable materials or performance--Display to minors--Definitions--Penalty
ND CODE 12.1-27.1-03.2 Exhibition of X-rated motion picture in unscreened outdoor theater--Penalty
ND CODE 12.1-29-03 Prostitution
ND CODE 12.1-30-01 Business or labor on Sunday--Exemptions--Classification of offenses
ND CODE 12.1-31-01 Disorderly conduct
ND CODE 12.1-31-03 Sale of tobacco to minors and use by minors prohibited

ND CODE 12.1-31-06 Volatile chemicals--Inhalation of vapors prohibited--Definitions--Penalty
ND CODE 12.1-32-01 Classification of offenses--Penalties
ND CODE 12.1-32-01.1 Organizational fines
ND CODE 12.1-32-02 Sentencing alternatives--Credit for time in custody--Diagnostic testing
ND CODE 12.1-37-01 Willful failure to pay child support--Classification of offenses--Affirmative defense--Penalty

Title 14 – Domestic Relations and Persons

ND CODE 14-02.3-05 Penalty -- Abortion

Title 15 – Education

ND CODE 15-04-18 Destruction of timber by lessee prohibited--Exception--Penalty
ND CODE 15-04-19 Lessee not to break or plow uncultivated land--Penalty
ND CODE 15-04-22 Fraudulent bidding--Penalty
ND CODE 15-20.4-12 Violations--Criminal penalty
ND CODE 15-38.2-06 No secret files maintained—Penalty -- It must be deemed to be a class B misdemeanor for any person in any public school district in this state or in any educational institution supported by public funds to maintain a secret personnel file concerning any teacher or teachers to which said teacher or teachers do not have access as provided in this chapter.
ND CODE 15-47-15 School contracts--Advertisement for bids--Publication--Exceptions--Penalty
ND CODE 15-49-08 Penalty for willful disturbance of school -- Any person, whether pupil or not, who willfully molests or disturbs a public school when in session, or who willfully interferes with or interrupts the proper order or management of a public school, by act of violence, boisterous conduct, or threatening language, so as to prevent the teacher or any pupil from performing his duty, or who, in the presence of the schoolchildren, upbraids, insults, or threatens the teacher, is guilty of a class B misdemeanor
ND CODE 15-49-09 School supplies--Penalty for receiving commission on purchase
ND CODE 15-59.3-11 Penalty -- BOARDING HOME CARE FOR STUDENTS WITH DISABILITIES --

Title 16.1 -- Elections

ND CODE 16.1-09-07 Effect of intentional violation of chapter—Penalty -- STATEMENT OF INTERESTS
ND CODE 16.1-13-28 Penalty for requesting voter to vote in certain manner - Any person chosen to assist a voter who shall request the voter he is assisting to vote for or against any person, or any issue, is guilty of a class B misdemeanor

Title 18 -- Fires

ND CODE 18-01-11 Refusal of witness at fire marshal's investigation to testify, produce records, or obey order--Penalty
ND CODE 18-01-15 Abatement of conditions dangerous to persons--Order--Failure to comply--Penalty
ND CODE 18-01-33 State fire marshal has authority to promulgate rules and regulations for explosives—Penalty -- Any person who willfully refuses to comply with the safety rules and regulations as promulgated by the state fire marshal is guilty of a class B misdemeanor
ND CODE 18-01-34 Disclosure of information concerning toxic or hazardous substances--List to state fire marshal and local fire departments--Exceptions--Availability of information restricted--Penalty
ND CODE 18-08-07 Penalty for failure to extinguish camp or other fire
ND CODE 18-08-11 Penalty – related to Prohibiting sale, distribution, and possession of fire extinguishers containing certain toxic and poisonous vaporizing liquids
ND CODE 18-09-03 Penalty – Liquefied Petroleum Gas Regulation – violations

Title 19 – Food, Drugs, Oils and Compounds

ND CODE 19-02.1-04 Penalties and guaranty -- The following acts and the causing thereof within the state of North Dakota are hereby prohibited:
1. The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.
2. The adulteration or misbranding of any food, drug, device, or cosmetic.
3. The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.
4. The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of section 19-02.1-11 or 19-02.1-16.
5. The dissemination of any false advertisement.
6. The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by section 19-02.1-21.
7. The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the state of North Dakota from whom he received in good faith the food, drug, device, or cosmetic.
8. The removal or disposal of a detained or embargoed article in violation of section 19-02.1-05.
9. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being adulterated or misbranded.
10. Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter or of the federal act.
11. The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under section 19-02.1-16, or that such drug complies with the provisions of such section.
12. In the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal act. Nothing in this subsection may be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter.

13. Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by this subsection; or making, selling, disposing of, or causing to be made, sold, or disposed of, or keeping in possession, control, or custody, or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name or other identifying mark or imprint of another or any likeness of any of the foregoing upon any drug, device, or container thereof.
14. Dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the express permission in each case of the person ordering or prescribing.
15. The manufacture of drugs, or the supplying of drugs at wholesale or retail, unless a license or permit to do so has first been obtained from the board of pharmacy after application to the board of pharmacy and the payment of a fee set by the board of pharmacy.
16. The filling or refilling of any prescription in violation of subsection 1 of section 19-02.1-15.
ND CODE 19-03.1-23 Prohibited acts A--Mandatory terms of imprisonment and fines--Unclassified offenses—Penalties – possession of small amount of marijuana
ND CODE 19-03.2-03 Prohibited acts--Penalties—Exception -- It is a class B misdemeanor for a person to use, or to possess with intent to use, an imitation controlled substance.
ND CODE 19-04-04 Distribution of certain drugs and preparations prohibited--Penalty
ND CODE 19-06.1-06 Penalty – Sale of impure honey --
ND CODE 19-08-06 Penalty -- A person may not sell, offer, or expose for sale, or have in possession with intent to sell within this state, any beverage of whatever nature that contains any ingredient that is injurious to health, or is adulterated, misbranded, or insufficiently or improperly labeled within the meaning of chapter 19-02.1, or that is not licensed as provided in this chapter.
ND CODE 19-10-18 Sale of prohibited or miscolored gasolines--Penalty
ND CODE 19-10-22 Department may designate ports of entry and hold cars for inspection—Penalty -- sampling. The failure on the part of a transportation company or of any of its officers or employees to hold any such car or other vehicle of transportation for inspection is a class B misdemeanor
ND CODE 19-10-23 Penalties – Violations of laws and rules related to petroleum products
ND CODE 19-14-08 Penalty -- Any person who sells, offers, or exposes for sale, or has in possession with intent to sell, any livestock medicine in violation of any of the provisions of this chapter, or who willfully and falsely represents that any livestock medicine is registered for sale in this state when in fact it is not so registered, is guilty of a class B misdemeanor
ND CODE 19-16.1-11 Penalty – Antifreeze regulation
ND CODE 19-17-05 Penalty – Flour and bread standards
ND CODE 19-22-05 Penalty – Labeling of potatoes as to grade
ND CODE 19-22.1-03 Penalty – Sale of artificially colored potatoes

Title 20.1 – Game, Fish, Predators and Boating

ND CODE 20.1-01-01 General penalty – any violation of this chapter is B misdemeanor (includes hunting at night, hunting while intoxicated, using motor driven vehicle to flush out game, hiring someone to hunt for you or hunting for hire, aiding in concealment of unlawfully obtained game, posting of land,

defacing posted signs, hunting too close to occupied building without permission, hunting or pursuing game on unharvested cropland, hunting birds on utility lines, littering near game refuge, lake, river, public park or recreation area, tampering with traps, interfering with the rights of hunters and trappers)

ND CODE 20.1-01-18 Hunting on posted land and trapping on private land without permission unlawful--Penalty

ND CODE 20.1-01-23 Fence gates to be closed--Penalty--Violator's hunting license forfeited

ND CODE 20.1-02-05 Powers of director -- Any person who acts as a guide or outfitter without a license is guilty of a class B misdemeanor

ND CODE 20.1-02-14.1 Uniform complaint and summons--Promise to appear

ND CODE 20.1-03-01 General penalty – Licenses and Permits -- hunting without hunter's safety class, hunting or fishing without a license, practicing taxidermy without a license, failure to have proper license in possession while hunting, trapping or fishing

ND CODE 20.1-04-01 General penalty – Birds, Regulations -- taking game bird without license, taking or destroying or interfering with a nest, possession of more than authorized number of game birds, professional dog trainer allowing dog to run loose,

ND CODE 20.1-06-01 General penalty – Fish, frog and turtle regulations – taking undersized fish, possession of any setnets, seines, setlines, or fishtraps; possessing or erecting an icefishing house without a license; littering while fishing; commercial sale of fish without license; failure to keep and maintain a fishway on dammed waterway; taking turtles without a license; taking frogs out of season

ND CODE 20.1-07-01 General penalty – Fur-bearing animals, Regulations – must comply with chapter before trapping or hunting fur-bearing animal;

ND CODE 20.1-08-01 Orders and proclamations have force of law—Penalty – Governor may issue proclamations related to hunting and fishing; violation of such proclamations is B misdemeanor

ND CODE 20.1-09-01 General penalty – Propagation of protected birds and animals – must have permit from Game and Fish to propagate animals or to possess or transport; person with permit must issue annual report to Game and Fish;

ND CODE 20.1-11-01 General penalty – Game Refuges and Game Management Areas – tampering with posted signs, hunting on posted refuge or management area;

ND CODE 20.1-12-01 General penalty – Private shooting preserves – operating a shooting preserve without a permit; failure of private shooting reserve operator to properly tag birds

ND CODE 20.1-13-01 General penalty – Boating regulations –Failure to wear proper floatation device; No person may operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of any person. Reckless or negligent operation of a motorboat or vessel includes weaving through congested motorboat or vessel traffic, jumping the wake of another motorboat or vessel within one hundred feet [30.48 meters] of the motorboat or vessel, or in any other manner that is not reasonable or prudent.

2. No person may operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device while intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana.

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5. No person may cause or knowingly permit a minor under sixteen years of age to operate a motorboat propelled by over a ten horsepower motor unless the minor is otherwise authorized to do so by this section.

6. No person may operate a motorboat or vessel within one hundred feet [30.48 meters] of a person fishing from a shoreline, swimmer, swimming diving raft, or an occupied, anchored or nonmotorized, vessel, or within two hundred fifty feet [76.20 meters] of a reduced speed or slow or no wake sign at greater than slow or no wake speed.

7. No person may operate or permit the operation of a personal watercraft:

a. Without each person on board the personal watercraft wearing a United States coast guard approved type I, II, III, or V personal flotation device;

b. Within one hundred feet [30.48 meters] of a person fishing from a shoreline, swimmer, swimming diving raft, or an occupied, anchored, or nonmotorized, vessel at greater than slow or no wake speed;
c. While towing a person on water skis, a kneeboard, an inflatable craft, or any other device unless an observer is on board;
d. Without a lanyard-type engine cutoff switch being attached to the person, clothing, or personal flotation device of the operator, if the personal watercraft is equipped by the manufacturer with such a device;
e. If any part of the spring-loaded throttle mechanism has been removed, altered, or tampered with so as to interfere with the return-to-idle system;
f. To chase or harass wildlife;
g. Through emergent or floating vegetation at other than slow or no wake speed;
h. In a manner that unreasonably or unnecessarily endangers life, limb, or property, including weaving through congested watercraft traffic, jumping the wake of another watercraft within one hundred feet [30.48 meters] of the other watercraft; or
i. In any other manner that is not reasonable and prudent.
ND CODE 20.1-14-01 General penalty – Falconry – failure to comply with department rules related to falconry

Title 21 – Governmental Finance

ND CODE 21-05-08 Penalty for auditing account not itemized -- Any person, whether or not acting as a member of any board, who audits and allows any account, claim, or demand against any county or township required to be itemized, without having the same first duly itemized, is guilty of a class B misdemeanor
ND CODE 21-10-01 State investment board--Membership--Term--Compensation--Advisory council --

Title 23 – Health and Safety

ND CODE 23-01-01.1 State department of health to replace state department of health and consolidated laboratories
ND CODE 23-05-11 Obstructing health officer—Penalty -- Every person who opposes or obstructs the performance of the legal duty of any health officer or physician charged with the enforcement of the health laws is guilty of a class B misdemeanor
ND CODE 23-05-12 Violation of orders of boards of health--Obstructing inspection—Penalty -- Every person who violates, or refuses to comply with, any lawful order, direction, prohibition, ordinance, rule, or regulation prescribed by any board of health or health officer, or any regulation or rule lawfully made or established by any public officer under authority of the health laws, is guilty of a class B misdemeanor
ND CODE 23-06-05 Failure to bury within required time—Penalty – Care and custody of dead -- Any person who fails to comply with or who violates any of the provisions of section 23-06-04, or who refuses or neglects promptly to obey any order or instruction of the local board of health, is guilty of a class B misdemeanor
ND CODE 23-06-06 Neglect of burial—Penalty -- Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law who omits to perform that duty as required in this chapter is guilty of a class B misdemeanor
ND CODE 23-06-18 Dissection--Removal of body--Sale—Penalty --
ND CODE 23-06-27 Protection of human burial sites, human remains, and burial goods--Unlawful acts--Penalties—Exceptions -- Any person who knows or has reasonable grounds to believe that a human burial site, human remains, or burial goods, found in or on any land, are being disturbed or may be disturbed, by human activity without authority of law or by natural forces, shall immediately notify the local law enforcement agency with jurisdiction in the area in which

the burial, remains, or goods are located. A person is guilty of a class B misdemeanor who is required to provide such notification and willfully, as defined in section 12.1-02-02, fails to provide the same; Any person who knows or has reasonable grounds to believe that that person has encountered or discovered a human burial site, human remains, or burial goods associated with a human burial, in or on any land, shall refrain from any activity which might disturb or immediately cease any continued activity which might cause further disturbance of such burial, remains, or goods and shall, as soon as practicable, report the presence or discovery of the burial, remains, or goods to the local law enforcement agency with jurisdiction in the area in which the burial, remains, or goods are located. A person is guilty of a class B misdemeanor who is required to make such report and willfully, as defined in section 12.1-02-02, fails to make the same.
ND CODE 23-06-28 Arresting or attaching dead body--Penalty
ND CODE 23-06-29 Penalty for violating provisions relating to dissections and general penalty
ND CODE 23-06.2-10 Sale or purchase prohibited—Penalty -- 1. A person may not knowingly, for valuable consideration, purchase or sell any part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent.
2. Valuable consideration does not include reasonable payments for removal, processing, disposal, preservation, quality control, storage, transportation, and implantation of a part.
3. Any person who violates this section is guilty of a class B misdemeanor.
ND CODE 23-09-08 Bolts or locks to be supplied on doors of sleeping rooms -- HOTELS, LODGINGHOUSES, RESTAURANTS, AND BOARDINGHOUSES -- The doors of all rooms used for sleeping purposes in any lodging establishment within this state must be equipped with proper bolts or locks to permit the occupants of such rooms to lock or bolt the doors securely from within the rooms. The locks or bolts must be constructed in a manner that renders it impossible to unbolt or unlock the door from the outside with a key or otherwise, or to remove the key therefrom from the outside, while the room is bolted or locked from within.
ND CODE 23-09-21 Penalty—General -- HOTELS, LODGINGHOUSES, RESTAURANTS, AND BOARDINGHOUSES -- Any person operating a food or lodging establishment in this state, or letting a building used for such business, without first having complied with this chapter, is guilty of a class B misdemeanor
ND CODE 23-09.3-12 Penalty – Basic Care Facilities – violation of any laws or rules related to licensing or operating of basic care facility or maintenance of records by such facility is a B misdemeanor
ND CODE 23-09.4-08 Penalty – Residential care for autistic children -- Any person who operates or manages a residential care facility for children with autism or autistic-like characteristics without first obtaining a license as required by this chapter is guilty of a class B misdemeanor
ND CODE 23-13-03 Penalty – Safety Regulations – operating a gas station without being in complete compliance with fire marshal's regulations
ND CODE 23-13-03.5 Penalty – Safety Regulations -- It is unlawful for any person except the owner or the owner's authorized agent to fill or refill a container with liquefied petroleum gas, or any other gas or compounds; or buy, sell, offer for sale, give, take, loan, deliver, or permit to be delivered, or otherwise use a container if the container bears upon its surface, in plainly legible characters, the name, initials, mark, or other identifying device of the owner; nor may any person other than the owner of a container or a person so authorized by the owner, deface, erase, obliterate, cover up, or otherwise remove or conceal any name, mark, initial, or identifying device on the container.
ND CODE 23-13-05 Penalty for failure to construct doors of public buildings as required by the Americans with Disabilities Act -- All persons owning or having charge of any building described in section 23-13-04, including trustees and members of boards of directors and boards of education, shall see that the provisions of such section are complied with. Any person who fails to comply with the provisions of that section, or who builds, maintains, or permits to be used any building contrary to the provisions thereof, is guilty of a class B misdemeanor (includes all schoolhouses and churches within the limits of any city and in all other buildings used for public assemblages of any character in this state, including theaters, public halls, city halls, courthouses, factories, hotels, and all other public buildings wherein numbers of persons are employed or are in the habit of meeting together for any purpose)

ND CODE 23-13-06 Owner of land to fill abandoned or disused wells, shafts, and other excavations -- Any person owning or occupying lands in this state upon which is located any abandoned or disused well or shaft shall cause such well or shaft to be filled with earth or stones so as to obviate any possible menace to the safety of persons or property. Any person violating the provisions of this section is guilty of a class B misdemeanor

ND CODE 23-13-14 Sale of metal beverage containers having detachable parts prohibited—Penalty -- No person may sell or offer for sale in this state a carbonated or noncarbonated soft drink, beer, other malt beverage, tea, or fruit or vegetable drink in liquid form and intended for human consumption contained in an individual sealed metal container designed and constructed so that a metal pull tab is detached in the process of opening the container. This section does not prohibit the use of adhesively attached aluminized polyester film pull top seals. Violation of this section is a class B misdemeanor and each day of violation is a separate offense.

ND CODE 23-13-15 Smoke detection systems for residential rental property—Penalty -- Any property owner who willfully fails to install a smoke detection system as required by this section is guilty of a class B misdemeanor

ND CODE 23-13-16 Aboveground storage tanks permitted—Limitations --

ND CODE 23-15-06 General penalty – Sale of fireworks without permit

ND CODE 23-19-09 Penalties --CESSPOOLS, SEPTIC TANKS, PRIVIES--REGULATION – engaging in related business without a license; failure to comply with health department rules

ND CODE 23-20.2-06 Penalties -- DISPOSAL OF NUCLEAR AND OTHER WASTE MATERIAL -- It is a class B misdemeanor for any person, for the purpose of evading this chapter, or any rule, regulation, or order of the commission, to make or cause to be made any false entry or statement in a report required by this chapter or by any rule, regulation, or order issued or promulgated by the commission, or to make or cause to be made any false entry in any record, account, or memorandum required by this chapter, or by any rule, regulation, or order of the commission, or to omit, or cause to be omitted, from any such record, account, or memorandum, full, true, and correct entries as required by this chapter or by any rule, regulation, or order of the commission, or to remove from this state or destroy, mutilate, alter, or falsify any record, account, or memorandum.

ND CODE 23-28-06 Falsifying identification or misrepresenting condition—Penalty – Uniform duties to disabled persons

ND CODE 23-29-05.1 Littering and open burning prohibited—Penalty -- A person violating this section is guilty of an infraction, except if the litter discarded and abandoned amounted to more than one cubic foot [0.0283 cubic meters] in volume or if the litter consisted of furniture or a major appliance, the offense is a class B misdemeanor

ND CODE 23-32-04 Degradable plastic rings—Penalty -- No person may sell or offer for sale containers connected to each other by plastic rings unless the plastic rings are degradable and bear a distinguishing symbol. Any manufacturer of plastic rings used to connect containers to each other who sells or offers for sale or provides for the sale or offer for sale of those rings in this state shall design a distinguishing symbol indicating that the devices are degradable. The manufacturer shall register the distinguishing symbol with the department and provide the department with a sample of the plastic rings. Any person who violates this section is guilty of a class B misdemeanor

ND CODE 23-34-04 Peer review committee--Mandatory reports -- A peer review committee shall report to the commission on medical competency any information that indicates a probable violation of subsection 4, 5, 16, or 17 of section 43-17-31. A health care organization is guilty of a class B misdemeanor if its peer review committee fails to make any report required by this section.

Title 24 – Highways, Bridges and Ferries

ND CODE 24-03-11 Penalty for failure to erect warning signs -- Any person in charge of any work or repairs on any public road, culvert, or bridge who fails or neglects to erect and maintain suitable warning signs as provided in sections 24-03-09 and 24-03-10 is guilty of a class B misdemeanor.
ND CODE 24-06-27 Penalty for injuring ditch -- Any person who obstructs or in any way injures any ditch opened as provided in section 24-06-26, is liable to pay to the overseer of highways of such road district double the damages caused by such injury, which must be assessed by the jury or court, and also is guilty of a class B misdemeanor
ND CODE 24-12-05 Penalties – Causing damage to roadways or tampering with, damaging or removing road signs
ND CODE 24-15-05 Penalty --Any person who proceeds or travels through a roadblock without subjecting himself to the traffic control so established is guilty of a class B misdemeanor

Title 25 – Mental and Physical Illness or Disability

ND CODE 25-01.3-05 Retaliation--Presumptions—Penalty – Committee on Protection and Advocacy -- An employer that imposes any form of discipline or retaliation against an employee solely because the employee reported having knowledge of or reasonable cause to suspect that a person with developmental disabilities or mental illness was abused, neglected, or exploited is guilty of a class B misdemeanor

Title 26.1 -- Insurance

ND CODE 26.1-01-03 Duties of commissioner --
ND CODE 26.1-09-15 Penalty -- RECIPROCAL OR INTERINSURANCE EXCHANGES -- Any attorney who exchanges any contract of indemnity of the kind and character specified in this chapter, and any attorney or representative of the attorney who solicits or negotiates any application for such contract without complying with this chapter, is guilty of a class B misdemeanor
ND CODE 26.1-10-11 Criminal proceedings—Penalty – Insurance Holding Company Systems – insurance company's failure to comply with reporting requirements, etc.
ND CODE 26.1-24-09 Sale or negotiation of premium note prohibited—Penalty -- A promissory note taken in settlement of the first premium on any life, health, or accident insurance policy may not be sold or negotiated in any manner prior to the applicant's medical examination, where one is required, nor a binding receipt for the premium signed by an authorized agent of the insurance company has been delivered to the applicant, nor until the insurance company has received the application and medical examination. Any person violating this section is guilty of a class B misdemeanor.
ND CODE 26.1-25-18 Penalties – Fire, Property and Casualty Insurance Rates – related to insurance rates and filings
ND CODE 26.1-26.6-03 Persons disqualified as bail bondsmen--Violation is misdemeanor -- The following persons or classes may not be bail bondsmen and may not directly or indirectly receive any benefits from the execution of any bail bond: jailers, police officers, committing magistrates, magistrate court judges, sheriffs, deputy sheriffs and constables, or any person having the power to arrest or having anything to do with the control of federal, state, county, or municipal prisoners. A violation of this section is a class B misdemeanor
ND CODE 26.1-26.6-04 Unqualified and unlicensed person acting as bail bondsman prohibited--Pledging of property by individual as security for bail bond permitted--Violation is misdemeanor
ND CODE 26.1-27-03 Certificate of registration required—Penalty -- No person may act as or hold oneself out to be an administrator in this state, for the kinds of business for which the person is acting as an administrator, without a certificate of registration issued by the commissioner. Any person violating this subsection is guilty of a class B misdemeanor

ND CODE 26.1-28-05 Penalty – Insurance Vending Machines --

Title 27 – Judicial Branch of Government

ND CODE 27-09.1-07 Juror qualification form -- Any person who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror is guilty of a class B misdemeanor
ND CODE 27-09.1-17 Protection of jurors' and witnesses' employment -- An employer may not deprive an employee of employment, lay off, penalize, threaten, or otherwise coerce an employee with respect thereto, because the employee receives a summons or subpoena, responds thereto, serves as a juror or witness, or attends court for jury service or to give testimony pursuant to a subpoena. Any employer who violates subsection 1 is guilty of a class B misdemeanor

Title 28 – Judicial Procedure, Civil

ND CODE 28-21-12.1 Property delivery—Penalty --Any person who has received notice of levy in accordance with this chapter and fails to surrender and deliver the property levied on under section 28-21-08 upon demand of the sheriff is guilty of a class B misdemeanor

Title 32 – Judicial Remedies

ND CODE 32-13-08 Refusal to deliver—Punishment -- ACTIONS IN PLACE OF SCIRE FACIAS AND QUO WARRANTO -- If the defendant refuses or neglects to deliver any of the books or papers demanded, as prescribed in section 32-13-07, the defendant is guilty of a class B misdemeanor, and the court, or a judge thereof, by order, may put the person entitled to the office in possession thereof and of all the books and papers belonging thereto, and any party refusing to deliver the same, when ordered as aforesaid, shall be punished as for a contempt. Related to failure of public officer to surrender office and to actions involving stopping unlicensed corporations from doing business in North Dakota.

Title 35 – Labor and Employment

ND CODE 34-01-04 Intimidation, force, and threats against employees prohibited—Penalty -- Every person who, by any use of force, threats, or intimidation, prevents any person employed by another from continuing or performing his work or from accepting any new work or employment, and every person who uses any force, threats, or intimidation to induce such hired person to relinquish his work or employment or to return any work he has in hand before it is finished, is guilty of a class B misdemeanor
ND CODE 34-01-05 Intimidation, force, and threats against employers prohibited—Penalty -- Every person who, by any use of force, threats, or intimidation, prevents another from employing any person, and every person who uses force, threats, or intimidation to compel another to employ any person, or to force or induce another to alter his mode of carrying on business, or to limit or increase the number of persons employed by him, or their rate of wages or time of service, is guilty of a class B misdemeanor
ND CODE 34-01-17 Unlawful to discriminate because of age—Penalty -- No person carrying on or conducting within this state any business requiring employees may refuse to hire, employ, or license, or may bar or discharge from employment, any individual solely upon the ground of age; when the reasonable demands of the position do not require an age distinction; and, provided that such individual is well versed in the line of business carried on by such person, and

is qualified physically, mentally, and by training and experience to satisfactorily perform the duties assigned to him or for which he applies. Nothing herein affects the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of this section. Any person who violates any of the provisions of this section is guilty of a class B misdemeanor

ND CODE 34-05-03 Officials and employers to furnish certain information--Records—Penalty – Failure to provide requested information to the Labor Department

ND CODE 34-06-05.1 One day of rest in seven—Penalty --

ND CODE 34-06-19 Penalty for violation of chapter – Minimum wages and hours

ND CODE 34-06.1-09 Penalties – Equal Pay for Men and Women -- Any person who violates any provision of this chapter, or who discharges or in any other manner discriminates against any employee because such employee has made any complaint relating to a violation of any provision of this chapter, or has instituted, or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceedings, is guilty of a class B misdemeanor

ND CODE 34-11.1-08 Penalty – Public Employees Relations Act – Employer may not disadvantage a public employee based upon (1) marital status or (2) employee's participation in or communication with employee organization

ND CODE 34-13-02 License required—Penalty – Licensing Employment Agents and Agencies -- A person may not open or carry on an employment agency if that person has a physical presence or location within the state, unless that person first procures a license from the commissioner. A person opening or conducting any such agency without first procuring a license is guilty of a class B misdemeanor

Title 36 -- Livestock

ND CODE 36-01-08.4 Ownership of skunks and raccoons prohibited--Exception--Rules—Penalty --

ND CODE 36-01-28 Penalty -- Board of Animal Health – Violation of any rule adopted by the board of animal health

ND CODE 36-01-30 Feedlot registration--Rules—Penalty – Failure to comply with Board of Animal Health Rules or to register

ND CODE 36-07-14 Penalty for violation of chapter – Rendering Plants --

ND CODE 36-09-22 Sale of animal under false registration certificates--Changing marking--Auctioneer—Penalty -- No person may: 1. Sell any animal with a certificate of registration or breeding that does not belong to said animal. 2. Change in any way the certificate of registration or breeding of any animal. 3. Falsely represent any production record specified in any registration certificate. 4. Change the markings of any animals with intent to deceive the purchaser or misrepresent the sire to which such animal has been bred. The provisions of this section do not apply to any auctioneer or agent acting in good faith under the direction of the owner. Any person who violates any of the provisions of this section is guilty of a class B misdemeanor.

ND CODE 36-09-23 Removal of livestock from state--Brand inspection—Penalty --

ND CODE 36-11-01 Stock running at large prohibited—Penalty -- No cattle, horses, mules, swine, goats, or sheep may be permitted to run at large. Any owner or possessor of any such animal who willfully permits it to run at large through failure to maintain a lawful fence as provided in section 47-26-01, except in grazing area as provided in section 36-11-07, is guilty of a class B misdemeanor

ND CODE 36-11-19 Taking animals distrained—Penalty – Trespass of Livestock -- Every person who, except by due course of law, takes, or advises or assists in the taking of, any animal distrained and held by virtue of any provision of this chapter, from the possession of the person having the same in his charge, without the consent of the person holding such animal, is guilty of a class B misdemeanor

ND CODE 36-13-08 Taking up estray--Compliance with chapter—Penalty -- Any person taking up an estray who willfully fails to comply with the provisions of this chapter is guilty of a class B misdemeanor.

ND CODE 36-14-09 Living hog cholera virus and vaccines--Purchase, possession, or use of living hog cholera virus and vaccines prohibited—Penalty – contagious and infectious diseases, generally -- The purchase, possession, or use of living hog cholera virus and vaccines by any person including all licensed veterinarians, is unlawful except by written permit issued by the state veterinarian. Any person violating this section is guilty of a class B misdemeanor
ND CODE 36-14-13 Issuance of certificate of veterinary inspection by unauthorized person—Penalty --
ND CODE 36-14-16 Failure to restrain infected sheep--Penalty
ND CODE 36-15-19 Penalty for violation of provisions relating to testing of livestock --Any person who refuses to assist in or attempts to prevent the board or the commissioner from carrying out this chapter, or who violates any of the provisions of this chapter relating to the testing of cattle, is guilty of a class B misdemeanor
ND CODE 36-21-01 Regulations governing fraudulent registration of purebred livestock—Penalty -- Any person who shall: 1. Fraudulently represent any animal to be purebred; 2. Post or publish, or cause to be posted or published, any false pedigree or certificate; 3. Procure by fraud, false pretense, or misrepresentation the registration of any animal which is to be used for service, sale, or exchange in this state for the purpose of deception as to the pedigree thereof; 4. Sell or otherwise dispose of any animal as a purebred when he knows or has reason to believe that the animal is not the offspring of a regularly registered purebred sire and dam; or 5. Sell or otherwise dispose of any animal as a registered purebred by the use of a false pedigree or certificate of registration, is guilty of a class B misdemeanor

Title 37 -- Military

ND CODE 37-01-13 Right of way of national guard while on duty--Exceptions--Interference with—Penalty -- All persons who hinder, delay, or obstruct any portion of the national guard wherever parading or performing any military duty are guilty of a class B misdemeanor.
ND CODE 37-01-16 Unlawful conversion of military property--Unlawful wearing of uniforms and devices indicating rank—Penalty --
ND CODE 37-01-21 Military parades by certain bodies prohibited--Exceptions—Penalty --
ND CODE 37-17.1-07.1 Hazardous chemicals preparedness and response program --

Title 38 – Mining and Gas and Oil Production

ND CODE 38-08-06.3 Information statement to accompany payment to royalty owner--Penalty
ND CODE 38-08.1-07 Failure to comply with chapter—Penalty – Geophysical Exploration Requirements
ND CODE 38-16-01.1 Gravel and sand surface mining operations--Reclamation--Civil action--Penalty

Title 39 – Motor Vehicles

ND CODE 39-03-12 Penalty in violation of chapter – Related to highway patrol
ND CODE 39-04-41 Penalty for violation of provisions of chapter – Related to motor vehicle registration
ND CODE 39-05-33 General penalty – Related to vehicle title registration
ND CODE 39-06-03.1 Nondriver photo identification card issued by director--Release of information--Penalty--Public awareness -- 5. It is a class B misdemeanor for any person, except the director, or his authorized agent, to print or otherwise produce or reproduce cards or their components, which may be utilized as identification cards issued pursuant to this section.

ND CODE 39-06-17 Restricted licenses--Penalty for violation -- It is a class B misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to that person.
ND CODE 39-06-40 Unlawful use of license—Penalty --It is a class B misdemeanor for any person: 1. To display or cause or permit to be displayed or have in possession any canceled, revoked, suspended, fictitious, or fraudulently altered operator's license, permit, or nondriver photo identification card; 2. To lend one's operator's license, permit, or nondriver photo identification card to any other person or knowingly permit the use thereof by another; 3. To display or represent as one's own any operator's license, permit, or nondriver identification card not issued to that person; 4. To fail or refuse to surrender to the commissioner upon demand any operator's license, permit, or nondriver photo identification card which has been suspended, revoked, or canceled; or 5. To permit any unlawful use of an operator's license, permit, or nondriver photo identification card issued to that person. 6. To use a false or fictitious name in any application for an operator's license, permit, or nondriver photo identification card or to knowingly make a false statement or to conceal a material fact or otherwise commit a fraud in the application.
ND CODE 39-06-40.1 Reproducing operator's or driver's license or permit—Penalty – relates to duplicating or altering driver's licenses
ND CODE 39-06-42 Penalty for driving while license suspended or revoked--Impoundment of vehicle number plates--Authority of cities -- any person who drives a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state while that person's license or privilege so to do is suspended or revoked in any jurisdiction is guilty of a class B misdemeanor
ND CODE 39-06.1-04 Failure to appear, pay statutory fee, post bond--Procedure—Penalty --Failure to appear at the time designated, after signing a promise to appear, without paying the statutory fee or posting and forfeiting bond is a class B misdemeanor
ND CODE 39-07-08 Hearing--Time--Promise of defendant to appear--Failure to appear—Penalty – Any person willfully violating the person's written promise to appear is guilty of a class B misdemeanor
ND CODE 39-08-01 Persons under the influence of intoxicating liquor or any other drugs or substances not to operate vehicle—Penalty -
ND CODE 39-08-03 Reckless driving--Aggravated reckless driving--Penalty
ND CODE 39-08-05 Accidents involving damage to vehicle—Penalty – leaving the scene of an accident
ND CODE 39-08-19 Penalty for harassment of domestic animals --Any person operating a motorcycle, snowmobile, or other motor vehicle as defined in subsection 38 of section 39-01-01 who willfully harasses or frightens any domestic animal, is, upon conviction, guilty of a class B misdemeanor
ND CODE 39-08-20 Driving without liability insurance prohibited—Penalty --
ND CODE 39-10-01.1 Required obedience to traffic laws --
ND CODE 39-10-65 Operation of motor vehicle, tractor, or other vehicle prohibited on flood protective works--Exception—Penalty --
ND CODE 39-12-21 Penalty -- Any driver of a vehicle who refuses to stop and submit the vehicle and load to a weighing when directed to do so by any police officer or any agent of this state having police powers relating to motor vehicles, is guilty of a class B misdemeanor
ND CODE 39-16-30 Operating while under suspension or revocation—Penalties --
ND CODE 39-16.1-21 Operating under suspension or revocation—Penalties --
ND CODE 39-16.2-05 Penalties -- A dealer subject to the financial responsibility requirements of this chapter who operates or causes to be operated a motor vehicle in this state without meeting the financial responsibility requirements of this chapter is guilty of a class B misdemeanor
ND CODE 39-18-07 Penalty – Mobile Home Dealer Regulation – failure to comply with rules in chapter is B misdemeanor
ND CODE 39-21-51 Alteration of odometers or other mileage recorders, hour meters on tachometers or other hour recorders—Penalty
ND CODE 39-22-07.1 Motor vehicle sales prohibited on Sunday--Penalty
ND CODE 39-22-13 Penalty for violation of chapter – Motor Vehicle Dealing Licensing
ND CODE 39-22.1-04 Penalty – Trailer Dealer's Licensing and Bonding

ND CODE 39-22.3-12 Penalty for violation of provisions of chapter – Motorcycle Dealers --
ND CODE 39-24-11 Penalties – Regulation and Registration of Snowmobiles
ND CODE 39-24.1-07 Criminal penalties for operating snowmobile while having alcohol or drug concentrations --
ND CODE 39-24.1-13 Fleeing or attempting to elude a peace officer – Snowmobile Operator Regulation
ND CODE 39-25-08 Violations and penalties – operating commercial driver's training business without license
ND CODE 39-29-12 Penalties – Related to operation of All Terrain Vehicles on posted land, while intoxicated, or in reckless/negligent manner

Title 40 – Municipal Government

ND CODE 40-50.1-02 Monuments required for survey—Destruction -- Any person who disturbs, removes, or destroys any survey or reference monument or landmark evidencing a property line or cornerpost is guilty of a class B misdemeanor

Title 43 – Occupations and Professions

ND CODE 43-01-20 Penalty – Abstractors --
ND CODE 43-03-21 Penalty – Architects --
ND CODE 43-04-45 Penalty – Barbers --
ND CODE 43-05-17 Penalty – Podiatrists --
ND CODE 43-06-19 Penalty – Chiropractors --
ND CODE 43-07-18 Penalty – Contractors --
ND CODE 43-07-21 Penalty--Injunction proceedings – related to required employment preferences under state and federal law
ND CODE 43-09-09.2 Advertising prohibited--Exceptions—Penalty -- Electricians
ND CODE 43-09-23 Criminal penalty--Civil proceedings – Electricians
ND CODE 43-10-20 Penalty – Funeral Service Practitioners
ND CODE 43-10-24 Penalty --
ND CODE 43-11-35 Penalty – Cosmotologists --
ND CODE 43-12.1-15 Violation—Penalties – Nurse Practices Act --
ND CODE 43-13-27 Penalty – Optometrists --
ND CODE 43-15-14 Unlawful practice of pharmacy
ND CODE 43-15-44 Penalty for violations – pharmacy
ND CODE 43-17-34 Practicing without a license--Violation of chapter—Penalty – Physicians and Surgeons
ND CODE 43-17.1-05.1 Reports to commission on medical competency--When required --
ND CODE 43-18-11.3 Advertising prohibited--Exceptions—Penalty -- Plumbers
ND CODE 43-19.1-31 Violation and penalties – Professional Engineers and Land Surveyors
ND CODE 43-20-09 Violation of chapter a misdemeanor – Dental Hygenists
ND CODE 43-25-19 Penalty for violation – Massage Therapists
ND CODE 43-26-14 Penalty – Physical Therapists

ND CODE 43-29-17 Unlawful practice of veterinary medicine--Penalty--Civil remedy -- Veterinarians
ND CODE 43-30-10 Penalty—Injunction – Investigative and Security Services
ND CODE 43-31-17 Violation—Penalty – Detection of Deception Examiners
ND CODE 43-32-31 Violation--Penalty—Injunction -- Psychologists
ND CODE 43-33-18 Violations--Penalty—Injunction – Hearing Aid Dealers
ND CODE 43-36-25 Violation—Penalty – Professional Soil Classifiers
ND CODE 43-39-11 Penalty – Athletic Trainers
ND CODE 43-40-18 Penalty – Occupational Therapists
ND CODE 43-41-13 Bribery--False statements – Social Workers
ND CODE 43-41-14 Penalty – Social Workers
ND CODE 43-43-08 Penalty – Environmental Health Practitioners
ND CODE 43-44-17 Penalty – Dieticians and Nutritionists
ND CODE 43-45-08 Penalty – Addiction Counselors
ND CODE 43-47-10 Penalty -- Counselors
ND CODE 43-48-16 Penalty – Clinical Laboratory Personnel

Title 47 -- Property

ND CODE 47-14-11 Criminal penalty for usury --
ND CODE 47-21.1-06 Penalty – Unauthorized duplication or recording of sound recordings
ND CODE 47-27-03 Violations—Penalty – Failure to close a fence gate
ND CODE 47-30.1-34 Penalties -- A person who willfully refuses after written demand by the administrator of the unclaimed property fund to pay or deliver property to the administrator as required under this chapter is guilty of a class B misdemeanor

Title 48 – Public Buildings

ND CODE 48-09-05 Penalty – requirement of letting of bids for concessions, etc., in public buildings

Title 49 – Public Utilities

ND CODE 49-10.1-10 Use of railroad tracks for highway purposes—Penalty --
ND CODE 49-10.1-12 Trespassing and stealing rides on cars, engines, and trains--Penalty
ND CODE 49-21-20 Penalty – Discrimination by telecommunication companies; refusal to allow use of party line for emergency purposes;

Title 50 – Public Welfare

ND CODE 50-11-10 Penalty – licensing of foster care homes for children and adults --
ND CODE 50-11.1-13 Penalty – Early Childhood Services licensing
ND CODE 50-11.1-13.1 Penalty for provision of services--When applicable – Early Childhood Services
ND CODE 50-19-15 Penalty – Licensing, etc., of maternity homes
ND CODE 50-20-06 Penalty – birth of child must be reported within 24 hours
ND CODE 50-25.1-09.1 Employer retaliation prohibited – Child Abuse and Neglect -- An employer who retaliates against an employee solely because the employee in good faith reported having reasonable cause to suspect that a child was abused or neglected, or died as a result of abuse or neglect, or because the employee is a child with respect to whom a report was made, is guilty of a class B misdemeanor
ND CODE 50-25.1-13 Penalty for failure to report--Penalty and civil liability for false reports – Child Abuse and Neglect
ND CODE 50-25.1-14 Unauthorized disclosure of reports—Penalty --
ND CODE 50-25.2-10 Penalty and civil liability for false reports – Vulnerable Adult Protection Services
ND CODE 50-25.2-11 Retaliation prohibited--Presumption—Penalty -- An employer who imposes any form of discipline or retaliation against an employee solely because the employee reported in good faith having knowledge of or reasonable cause to suspect that a vulnerable adult is or has been abused or neglected, or because the employee is a vulnerable adult with respect to whom a report was made, is guilty of a class B misdemeanor

Title 51 – Sales and Exchanges

ND CODE 51-04-10 Penalty – Licensing of Transient Merchants
ND CODE 51-05.1-07 Penalty – Licensing of Auctioneers and Clerks
ND CODE 51-06-03 Penalty – Regulation of Trading Stamps and Devices
ND CODE 51-07-12 Automobile sales finance contracts--Information of insurance protection to be given--Warning required—Penalty --
ND CODE 51-07-13 Labeling imported meats sold--Penalty
ND CODE 51-07-22 Resale of returned passenger motor vehicles--Penalty
ND CODE 51-07-24 Insurance claims for excessive charges--Penalty
ND CODE 51-12-02 Penalty – False Advertising
ND CODE 51-12-13 Penalty – False Advertising
ND CODE 51-18-09 Penalty – Related to regulation of home solicitation sales

Title 52 – Social Security

ND CODE 52-01-04 Penalty for use of list of names for political purposes
ND CODE 52-06-23 Administering oaths--Taking depositions--Compelling attendance of witnesses and memoranda--Penalty
ND CODE 52-06-40 Penalty for violation or failure to perform duty where no penalty provided
ND CODE 52-09-18 Agent and attorney may represent claimant--Regulations--Fees--Penalty

Title 53 – Sports and Amusements

ND CODE 53-01-19 Penalty – State Athletic Commissioner – violation of rules adopted by commissioner
ND CODE 53-02-15 General penalty – Dances, dancing places and musical performances – related to security at dances
ND CODE 53-03-08 Penalty – Regulation of Carnivals
ND CODE 53-04-08 Penalty – Licensing of Amusement Games --
ND CODE 53-05-06 Penalty – Restrictions related to amusements – related to required filings, etc.

Title 54 – State Government

ND CODE 54-02-01 Great seal--Permitted uses--Penalty for commercial use --
ND CODE 54-03.2-15 Penalties – Failure to comply with legislative subpoena
ND CODE 54-05.1-07 Penalty – Regulations related to legislative lobbying
ND CODE 54-16-05 Penalty for expending more than appropriated – Regulation related to state officers
ND CODE 54-17.3-08 Violation of sections 54-17.3-01 through 54-17.3-08—Penalty – Paleontological Resource Protection – moving fossils
ND CODE 54-27-13 Penalty for expenditure in excess of appropriation for state institutions --
ND CODE 54-27-17 Penalty for investment of public funds without consent of industrial commission

Title 55 – State Historical Society and State Parks

ND CODE 55-08-16 Uniform complaint and summons--Promise to appear—Penalty – Parks and Recreation Department

Title 57 – Taxation

ND CODE 57-40.3-11 Penalties – related to Motor Vehicle Excise Tax
ND CODE 57-40.5-10 Penalties – related to Aircraft Excise Tax
ND CODE 57-43.2-24 Penalties – related to Special Fuels and Importer For Use Taxes
ND CODE 57-55-01.2 Statements of full consideration to be filed with application for title to mobile homes--Sales ratio study—Penalty – Taxation of Mobile Homes
ND CODE 57-55-07 Failure to apply for permit--Illegal use of permit—Penalty – Taxation of Mobile Homes

Title 60 – Warehousing and Deposits

ND CODE 60-02-29 Allowance for dockage--Penalty for violation – Grain and Seed Warehouses -- All public warehousemen before testing for grade any grain handled by them shall remove therefrom and make due allowance for any dockage of such grain made by reason of the presence of straw, weed seeds, dirt, or any other foreign matter. Failure to do so is a B misdemeanor
ND CODE 60-03-05 Roving grain or hay buyer must carry license--Penalty for transacting business without license and giving a bond
ND CODE 60-03-06 Penalty – Roving grain or hay buyers – other requirements

Title 61 -- Waters

ND CODE 61-01-07 Obstruction of watercourses—Penalty --If any person illegally obstructs any ditch, drain, or watercourse, or diverts the water therein from its natural or artificial course, the person is liable to the party suffering injury from the obstruction or diversion for the full amount of the damage done, and, in addition, is guilty of a class B misdemeanor
ND CODE 61-01-25 Penalty -- Any person violating any of the provisions of this chapter or any rule or regulation of the state engineer for which another penalty is not specifically provided is guilty of a class B misdemeanor
ND CODE 61-04.1-41 Penalty – licensing of Weather Modification entities
ND CODE 61-14-11 Penalty – Violation of general rules related to irrigation
ND CODE 61-15-08 Drainage of meandered lake—Penalty -- Any person who, without written consent of the state engineer, shall drain or cause to be drained, or who shall attempt to drain any lake or pond, which has been meandered by the government of the United States in the survey of public lands, shall be guilty of a class B misdemeanor
ND CODE 61-16.1-38 Permit to construct or modify dam, dike, or other device required--Penalty—Emergency --
ND CODE 61-16.1-63 Penalty for violation of chapter – Operation of Water Resource Districts
ND CODE 61-16.2-09 Enforcement and penalties – Floodplain management violations
ND CODE 61-20-04 Artesian or flowing wells--Penalty for certain actions -- The owner or person in control of an artesian or flowing well, who: 1. Allows it to flow without a valve or other device for checking the flow as required by law, or without proper repair of pipes and valves; 2. Interferes with the well, valve, or other device; 3. Permits the water to waste unnecessarily; or 4. Permits the water to run upon the lands of another or into the ditches along any public road except a regularly established drainage ditch, shall be guilty of a class B misdemeanor
ND CODE 61-21-39 Petition for a lateral drain--Bond of petitioners—Penalty – Failure to petition for permission to dig a lateral drain

Title 62.1 -- Weapons

ND CODE 62.1-02-05 Possession of a firearm at a public gathering--Penalty--Application
ND CODE 62.1-02-06 Discharge of firearm within city--Penalty--Application
ND CODE 62.1-02-07 Use of firearm by certain minors prohibited--Penalty
ND CODE 62.1-02-10 Carrying loaded firearm in vehicle--Penalty--Exceptions

Title 63 -- Weeds

ND CODE 63-01.1-15 Penalties – Noxious Weed Control – failure to clean equipment is a B misdemeanor

Title 64 – Weights, Measures and Grades

ND CODE 64-03-09 General penalty -- It is unlawful for any buyer to take a greater quantity than is provided by the standards established in this title, or any seller to give a lesser quantity, unless both parties to the sale have actual knowledge of the variation from the standards, etc. It is unlawful for any person to knowingly mark or stamp an incorrect weight or tare on any package, or to knowingly sell or offer for sale any package so marked. It is unlawful for any person

to place or conceal with any goods usually sold by weight any foreign substance for the purpose of increasing the apparent weight of the goods. It is unlawful for any person to knowingly and fraudulently use a weighing or measuring device, or keep a device for public use, which does not conform to the legal standard of weights and measures of the state, or to alter a weighing or measuring device after it has been tested or calibrated and sealed so that it does not conform to the standard. It is unlawful for any person to: 1. Offer or expose for sale, sell, use, or possess a false weighing or measuring device, for use in buying or selling any commodity or thing, or any weighing or measuring device which has not been sealed as provided by section 64-02-13. 2. Dispose of any condemned weighing or measuring device, or remove any tag placed thereon by the commission. 3. Sell, offer, or expose for sale less than the quantity represented. 4. Sell, offer for sale, or possess for the purpose of selling, any device or instrument to be used or designed to falsify any weighing or measuring device. 5. Refuse to pay any fee charged for testing or calibrating and sealing or condemning any weighing or measuring device.

ND CODE 64-04-05 Penalty -- It is unlawful to sell or offer for sale, either at wholesale or retail, any liquefied petroleum gas, either in liquid or vapor form, except by avoirdupois weight, specified in pounds; liquid measure, specified in gallons; vapor measure, specified in cubic feet; or specified in such other units approved by the commission. Liquid meters may not be equipped with a bypass around the liquid meter.