

HOUSE BILL NO. 1351

Introduced by

Representatives Monson, Becker, Damschen, Dockter, J. Nelson, Paur, Trottier

Senators Campbell, Miller, Poolman

1 A BILL for an Act to amend and reenact sections 11-15-03, 11-16-01, 11-16-06, and 14-09-29 of
2 the North Dakota Century Code, relating to the duties of the sheriff and state's attorney and to
3 parenting rights and responsibilities.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 11-15-03 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **11-15-03. Duties of sheriff.**

8 The sheriff shall:

- 9 1. Preserve the peace.
- 10 2. Arrest and take before the nearest magistrate, or before the magistrate who issued the
11 warrant, all persons who attempt to commit or who have committed a public offense.
- 12 3. Prevent and suppress all affrays, breaches of the peace, riots, and insurrections which
13 may come to the sheriff's knowledge.
- 14 4. Attend each term of the district court held within the county; obey its lawful orders and
15 directions; and act as crier thereof and make proclamation of the opening and
16 adjournment of court and of any other matter under its direction.
- 17 5. Command the aid of as many inhabitants of the county as the sheriff may think
18 necessary in the execution of the sheriff's duties.
- 19 6. Take charge of and keep the county jail and the prisoners therein.
- 20 7. Endorse upon all notices and process received by the sheriff for service the year,
21 month, day, hour, and minute of reception, and issue therefor to the person delivering
22 it, on payment of the sheriff's fees, a certificate showing the names of the parties, the
23 title of the paper, and the time of its reception.
- 24 8. Serve all process or notices in the manner prescribed by law.

- 1 9. Certify under the sheriff's hand upon each process or notice the time and manner of
- 2 service, or if the sheriff fails to make service, the reasons for failure, and return the
- 3 same without delay.
- 4 10. Perform such other duties as are required of the sheriff by law.
- 5 11. Enforce, personally or through deputies, all statutes defining traffic violations
- 6 denominated noncriminal by section 39-06.1-02.
- 7 12. Assist the district court in enforcing compliance with a decree or order of the court
- 8 regarding primary residential responsibility and parenting time.

9 **SECTION 2. AMENDMENT.** Section 11-16-01 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **11-16-01. Duties of the state's attorney.**

- 12 1. The state's attorney is the public prosecutor, and shall:
- 13 1. a. Attend the district court and conduct on behalf of the state all prosecutions for
- 14 public offenses.
- 15 2. b. Institute proceedings before magistrates for the arrest of persons charged with or
- 16 reasonably suspected of public offenses when the state's attorney has
- 17 information that such offenses have been committed, and for that purpose, when
- 18 the state's attorney is not engaged in criminal proceedings in the district court,
- 19 the state's attorney shall attend upon the magistrates in cases of arrests when
- 20 required by them except in cases of assault and battery and petit larceny.
- 21 3. c. Attend before, and give advice to, the grand jury whenever cases are presented
- 22 to it for consideration.
- 23 4. d. Draw all indictments and informations.
- 24 5. e. Defend all suits brought against the state or against the county.
- 25 6. f. Prosecute all bonds forfeited in the courts of record of the county and prosecute
- 26 all actions for the recovery of debts, fines, penalties, and forfeitures accruing to
- 27 the state or to the county.
- 28 7. g. Deliver duplicate receipts for money or property received in the state's attorney's
- 29 official capacity and file copies thereof with the county auditor.
- 30 8. h. On the first Monday of January, April, July, and October in each year, file with the
- 31 county auditor an account, verified by the state's attorney's oath, of all money

- 1 received by the state's attorney in an official capacity in the preceding three
2 months, and at the same time, pay it over to the county treasurer.
- 3 9. i. Give, when required and without fee, the state's attorney's opinion in writing to
4 the county, district, township, and school district officers on matters relating to the
5 duties of their respective offices.
- 6 10. j. Keep a register of all official business in which must be entered a note of each
7 action, whether civil or criminal, prosecuted officially, and of the proceedings
8 therein.
- 9 11. k. Repealed by S.L. 1945, ch. 161, § 1.
- 10 12. l. Act as legal adviser of the board of county commissioners, attend the meetings
11 thereof when required, and oppose all claims and actions presented against the
12 county which are unjust or illegal.
- 13 13. m. Institute an action in the name of the county to recover any money paid upon the
14 order of the board of county commissioners without authority of law as salary,
15 fee, or for any other purpose, or any money paid on a warrant drawn by any
16 officer to that officer's own order or in favor of any other person without
17 authorization by the board of county commissioners or by law.
- 18 14. n. Institute an action in the name of the county to restrain the payment of any
19 money described in any order or warrant of the kind described in subsection 13
20 when the state's attorney secures knowledge of such order or warrant before the
21 money is paid thereon.
- 22 15. o. Assist the district court in behalf of the recipient of payments for child support or
23 spousal support combined with child support in all proceedings instituted to
24 enforce compliance with a decree or order of the court requiring such payments.
- 25 16. p. Assist the district court in all proceedings instituted to enforce compliance with a
26 decree or order of the court regarding primary residential responsibility and
27 parenting time.
- 28 q. Institute proceedings under chapter 25-03.1 if there is probable cause to believe
29 that the subject of a petition for involuntary commitment is a person requiring
30 treatment.

1 mother and father, whether married or unmarried, there is no presumption as to whom
2 will better promote the best interests and welfare of the child.

3 2. In any proceeding dealing with parenting rights and responsibilities, there is a
4 presumption that each parent is fit to care for the child and, in any proceeding in which
5 that presumption is not rebutted, the court shall award parenting time and residential
6 responsibility that is as equitable as reasonably possible. This presumption may be
7 rebutted only upon a showing by clear and convincing evidence that awarding
8 equitable parenting time and residential responsibility would cause serious harm or
9 detriment to the physical or emotional health of the child.

10 3. If the court finds that a parent has perpetrated domestic violence and that parent does
11 not have residential responsibility, and there exists one incident of domestic violence
12 which resulted in serious bodily injury or involved the use of a dangerous weapon or
13 there exists a pattern of domestic violence within a reasonable time proximate to the
14 proceeding, the court shall allow only supervised parenting time with that parent
15 unless there is a showing by clear and convincing evidence that unsupervised
16 parenting time would not endanger the child's physical or emotional health.

17 ~~3.4.~~ If any court finds that a parent has sexually abused the parent's child, the court shall
18 prohibit contact between the abusive parent and the child until the court finds that the
19 abusive parent has successfully completed a treatment program designed for such
20 sexual abusers and that supervised parenting time is in the child's best interests.
21 Contact between the abusive parent and the child may be allowed only in a
22 therapeutic setting, facilitated by a therapist as part of a sexual abuse treatment
23 program, and only when the therapist for the abusive parent and the therapist for the
24 abused child agree that contact serves a therapeutic purpose and is in the best
25 interests of the child.

26 ~~4.5.~~ In any proceeding dealing with parental rights and responsibilities in which a parent is
27 found to have perpetrated domestic violence, and there exists one incident of
28 domestic violence which resulted in serious bodily injury or involved the use of a
29 dangerous weapon or there exists a pattern of domestic violence within a reasonable
30 time proximate to the proceeding, all court costs, attorney's fees, evaluation fees, and

- 1 expert witness fees must be paid by the perpetrator of the domestic violence unless
- 2 those costs would place an undue financial hardship on that parent.