

2009 HOUSE JUDICIARY

HB 1288

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1288

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/2/09

Recorder Job Number: 8313, 8357

Committee Clerk Signature

DeKrey

Minutes:

Chairman DeKrey: We will open the hearing on HB 1288.

Ladd Erickson, McLean County State's Attorney: Support, explained the bill (attachment from Mike Hagburg). There are four criminal procedure issues that are addressed in the bill. In section 1, it changes the title of Fleeing a peace officer to Refusing to halt. The reason to suggest that should be changed is that there are two fleeing a police officer in the Century Code. One is on foot (which is this one) and the second is fleeing in a vehicle which is in Title 39. I was informed by DOT this past summer that there was a conflict when entering the judgments if the fleeing on foot ticket is sent to DOT by the clerks and someone gets points on their license. This has no points. So because they are titled in the same way this should clear up the potential for conflict. In section 2 and section 3 involves uniform tickets. The first one is the Game and Fish ticket and the second one is the uniform traffic ticket. The amended language in these sections of the bill is going along with the Supreme Court's Joint Procedure Committee and I handed out an attachment from them. This past summer the states' attorneys met and brought forth these procedural issues that we thought were worthy of attention. We have some desire to look at the language in the uniform traffic and game & fish ticket. The states' attorneys felt like there could be tremendous cost savings if we could more broadly use the traffic tickets for simple offenses that occurred while an officer is present, like a

minor in possession or a marijuana pipes in a traffic stop. The reason for that line of thinking was for several reasons. There are service of process issues with a long form complaint that be eliminated. There is a lot of paperwork between sheriff's department, state's attorney offices and clerk of court's offices. That means that someone sits in jail longer to see a judge because the paperwork isn't completed, or there are times because of a busy state's attorney office in one of the bigger counties where a person is cited for both DUI and possession of a marijuana pipe, so the court handles the DUI because it's on the ticket and then they have to come back after a long form complaint to have the second hearing for a pot pipe that was in their pocket during that DUI citation. So there are two court hearings instead of one. So when you talk about how this is done, we did a survey and determined that some districts handled these cases differently. Some of them allowed a broader use of the traffic tickets and others didn't. A strict reading of the law says that, for example, that the motor vehicle uniform traffic ticket can only be used for motor vehicle type of offenses, but most state courts now allow for these different things. I wrote a letter to the Chief Justice of the Supreme Court that we think we should take a look at this. One of the problems we noted was that there were two cases since the last time the Legislature considered this that came out of the difference between who has superiority in court rules over acts. In both of these tickets, the statutes you have before you, for example on page 2, line 3, it says provisions of the ND Rules of Criminal Procedure relating to arrests without warrants do not apply, and if you look at the memo from the Supreme Court, in the area of this issue, is that the constitution of our state does not allow the legislative branch to overrule court rules. We noted that in both uniform traffic statutes that there was a constitutional question created because of the state law. The draft amendments here are 1) to get rid of the constitutional conflict and 2) to address the potential for a more expanded use. The proposal here is that the Rule Committee will determine when these

uniform citations can be used in lieu of a complaint. The last part of my handout is a draft rule that the states attorneys submitted. The committee took up this draft rule; basically our proposal was that if another offense of any type occurs in the officer's presence, which has been minors in possession about 95% and pot pipes, they can use the uniform citation. The committee rejected this last week for adoption because they wanted to see what the legislature was going to do and then they are going to take it up again. The bottom line is it is going to address our constitutional problem and get the language up to date. On page 2 of the bill, on lines 22-25 it creates some new language there. I felt in addressing this issue, that this language should be updated. In the Game & Fish code there is a multi-state game compact and this is already the law, if you live out of state. If someone is cited for a ND Game & Fish violation from out of state and fails to show for the court date, Game & Fish already has the power to send it to your home state and have your privileges suspended until you take care of the problem in ND. This would be similar to what we have in traffic code where if you don't your speeding ticket you're going to get a suspension. I would say that there is a case called Penila, and before anyone can be prosecuted for hunting with suspended privileges, their state would have to prove that they are on actual notice that they were under suspension. That's a constitutional concept. That language is basically put in to the compact to affect residents. The final proposal is in Section 4, on page 5 of the bill. This is to eliminate the appeal from district judge to district judge in a speeding ticket case. Currently there is no appeal to the Supreme Court. This does not affect supervisory writ authority. If there is a lower court acting without jurisdiction and handing out illegal sentences, the Supreme Court always has the ability by writ to address that. The reason for this is when the court system became unified this statute wasn't addressed. I don't know for sure if there was discussion about it at the time, I couldn't find a record of it. It used to make some sense to have a speeding ticket appealed

from county court to district court. But the way it plays out now, is if you don't really have an appeal, you get two hearings instead of one. If you get a speeding ticket and it is a \$30 offense, on the ticket the officer will check the box for a hearing if the defendant so requests. Then you have to post your \$30 and then the court sets up the hearing. When you come into the hearing, the state has to prove the speed zone that the radar gun was working at. Then what happens after that, under the procedures here, is that the person is told by the judge that they have the right to appeal. Then the person gets the chance to say whether they want an appeal or not; or within 30 days they can file a written notice of the appeal. It is a big deal because a district judge makes a decision on the speeding ticket issue (which is usually pretty straight-forward) and then if they request an appeal, another district judge hears that case a second time. It's not a big deal for the states' attorneys, but it is a burden on the officers because they have to come to court, usually on their time off. So then they have to come in for the first hearing right after they get finished working all night or on their day off. The state has to pay witness fees of \$25 plus mileage. But I submit that there is no process purpose to have a second hearing and require that officer to do it all over again for the second time; and incur expenses twice, because a lot of the time the defendant never shows up at the second hearing. It is a waste of time and money on everyone's part. The last provision of that section is that the appeal process still remains from the city court to the district court. There is a purpose for that. City courts are the true forum in this case, and have an important function because they do handle speeding violations. Some of the larger counties have full time prosecutors and law trained judges. But that is not the case in little towns. Often times there aren't law trained judges and the prosecutors don't show up, so there isn't a city attorney at the hearings. I don't know if they keep a record. In case something happens, there is a reason that you would want to have someone have the ability to appeal from city court into district

court, and under the current law, the city attorney must appear on that appeal into district court, which doesn't make a lot of practical sense to the city because, for example, the Garrison city attorney is a law firm in Minot. So if they are going to appeal on a \$30 speeding ticket, it may not be worth it to come from Minot to Washburn for a 5 minute hearing and charge those cities for \$300. The proposal here is to let the appropriate state's attorney consent to prosecute the appeal. By consent, the city could just have the state's attorney handle the appeal when we have court. It would save the city money if that's the way they want to handle it. They don't have to but that proposal is there. The final part of the bill is in section 5, is that this act becomes effective January 1, 2010. The reason for that date was that the court rules committee, that is dealing with the uniform citation issue has enough time to promulgate rules, go through the public process of enacting the court rules before this went into effect in August. I think that gives them time to get out the rule and then the Supreme Court has to go through their process of enacting it into the court rules of public process. That's the purpose of this bill to address these issues.

Rep. Delmore: There are a couple of things; you have sovereign nations included on the bottom of page 1, top of page 2, in section 2. Are we sure that we can do this on sovereign land. Please explain that to me.

Ladd Erickson: That's actually water, not Indian lands. Sovereign lands means like on the river; if you're below the high water mark. That definition was added by the Legislature through Game & Fish jurisdiction about a couple of sessions ago.

Rep. Delmore: In section 4, are you telling me that there no more complex cases than speeding that would be handled with this.

Ladd Erickson: It would be anything handled within the scope; it could be infractions, stop sign violations, etc. You're not eliminating the appeal from any criminal case.

Rep. Zaiser: In section 4, denies the person the right to appeal. I realize that there are additional expenses for the police officer showing up for court two times. My concern is denying anybody an appeal.

Ladd Erickson: This amendment has nothing to do with the court hearing. If the legislature changes this, they are going to change some things on the court rule, that's separate from section 4. The appeal is not technically applicable. To have an appeal, you have to have an issue in the lower court to be decided in the Supreme Court, such as abuse of discretion in following the law, for example. In this context it is providing two hearings as opposed to one. There is also the supervisory writ if something happens which has a factual basis for an appeal.

Rep. Zaiser: Is the appeal handled by a district judge or an administrative law judge and if it's handed by the administrative law judge, would it be appealed to the district judge.

Ladd Erickson: There is no administrative law judge in this process. There are district judges and magistrates. There is no administrative process here, strictly the court process.

Rep. Koppelman: You talked earlier about the constitutionality of rules and who has the authority to promulgate rules regarding procedures of the court and also of disciplinary actions. You said that we have a law on the books that conflicts with a rule that the court has made, and that the court has said that its rules are supreme and therefore we can't legislate how to make a rule. In other words, if we pass a law, which we have a lot on the books that deal in that area, and the court decides next week to adopt a rule that is different from that law, the rule supersedes and the law doesn't, and the reason for that is the court system.

Ladd Erickson: The court defers to the legislature on a lot of things, and the court says it has a problem with the legislature enacting, or comparing things, or supplemental things for arrest powers and procedures, Title 29 is a procedure statute. The concern is how these are written

where they say for example, amendment in section 3, regarding the traffic code. It says the rule of criminal procedure on the top of page 3 relating to arrests without warrants does not apply. You're saying in statute we think it overrules by statute so it is in direct conflict between the legislature and the Supreme Court.

Rep. Koppelman: In section 3, article 6 of the constitution it says the Supreme Court shall have the authority to promulgate rules and procedure, including all procedures to be followed by all courts in the state. I don't see anything in here that says it is supreme. The Supreme Court is the Supreme Court not supreme over everything.

Ladd Erickson: I guess I would refer you to the personnel on the Supreme Court staff who decided that case. That case would be on the website in State vs. Ashland (?) case. They will explain how they interpreted that to mean.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

(Reopened later in the afternoon).

Chairman DeKrey: We will take a look at HB 1288. What are the committee's wishes.

Rep. Klemin: I move to amend on page 5, line 23 overstrike "city" and replace with "municipal".

Rep. Delmore: Second.

Chairman DeKrey: Voice vote. Motion carried. We now have the bill before us as amended.

Rep. Kretschmar: I move a Do Pass as amended.

Rep. Wolf: Second.

12 YES 1 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Griffin

VR
2/2/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1288

Page 5, line 23, replace "city" with "municipal"

Renumber accordingly

Date: 2/2/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1288

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP DNP DP AS AMEND DNP AS AMEND

Motion Made By Rep. Kretschmar Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning		✓	Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 12 No 1

Absent 0

Floor Carrier: Rep. Griffin

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

REPORT OF STANDING COMMITTEE

HB 1288: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1288 was placed on the Sixth order on the calendar.

Page 5, line 23, replace "city" with "municipal"

Renumber accordingly

2009 SENATE JUDICIARY

HB 1288

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1288

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/2/09

Recorder Job Number: 9946

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Relating to complaint and summons procedures and administrative hearing appeals.

Ladd Erickson – Mclean County State's Attorney – See written testimony.

His first change is, changing the name of fleeing a police officer on foot, to refusing to halt.

The reason is, there are two fleeing police officers, one in the motor vehicle code and one in the criminal code. Sometimes in the system the fleeing on foot gets entered electronically and the person gets points on their driver's license by mistake. He continues with the changes in section 2 and 3. They would like the 2nd appeal system on a uniform traffic tickets taken out.

Senator Olafson– Asks for statistics on 2nd appeals and have any been overturned.

Erickson – Says he has not seen any overturned. He says they probably have but he doesn't know of any.

Senator Fiebiger – Wonders how long section 4 has been in place.

Erickson – Says, it is pre-court unification.

Senator Erickson – Would defense attorneys be willing to give up these cases.

Erickson – Usually defense attorneys do not show up, they haven't said there is a problem.

Senator Schneider – Asks what other states are doing.

Erickson – Replies he does not know.

Keith Witt – Chief of Police for Bismarck – In support of this bill. Said this would be a benefit to law enforcement.

Close the hearing on 1288

Senator Fiebiger asks for another day before acting on the bill.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1288

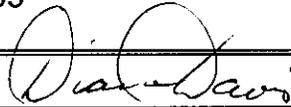
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/18/09

Recorder Job Number: 11193

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

The committee discusses uniform complaint and summons. Senator Lyson relates to the way things had always been done and sometime along the way things were dropped. He is not sure why we need this. Senator Fiebiger says he has heard of cases that have been overturned. Senator Nething asks Senator Schneider to meet with Ladd Erickson and we will discuss again on Monday.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1288

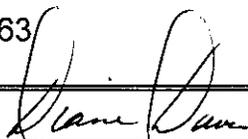
Senate Judiciary Committee

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Hearing Date: 3/23/09

Recorder Job Number: 11363

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Senator Schneider gives an update.

Senator Fiebiger's concern is not having another appeal process for traffic tickets.

Senator Nething questions why there are two hearings on a traffic ticket.

Senator Olafson mentions that testimony said there is seldom a decision overturned in the second hearing and is a waste of time for the court system and the officers.

Senator Schneider moves do pass

Senator Olafson seconds

Vote -5 yes-1 no

Senator Schneider will carry

REPORT OF STANDING COMMITTEE

HB 1288, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1288 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1288



North Dakota Supreme Court Committees ◀▲□/?
Joint Procedure Committee - September 2008 Agenda

MEMO

- HOME
- OPINIONS
- SEARCH
- INDEX
- GUIDES
- LAWYERS
- RULES
- RESEARCH
- COURTS
- CALENDAR
- NOTICES
- NEWS
- FORMS
- SUBSCRIBE
- CUSTOMIZE
- COMMENTS

TO: Joint Procedure Committee

FROM: Mike Hagburg

DATE: September 8, 2008

RE: Rule 5, N.D.R.Crim.P., Initial Appearance Before the Magistrate

*These handouts
also given to
Senate.*

Chief Justice VandeWalle has forwarded to the Committee a letter from McLean County State's Attorney Ladd Erickson regarding uniform citations in criminal cases. In his letter, Mr. Erickson indicates that there will likely be an effort in the next legislative session to revise criminal statutes to allow the expanded use of uniform citations. A copy of the Chief Justice's forwarding letter and Mr. Erickson's letter are attached.

Mr. Erickson would like to see coordination between the courts and the legislature in accommodating the expanded use of uniform citations. Mr. Erickson writes that different judicial districts deal with uniform citations differently. Mr. Erickson also notes that the current uniform citation statutes state that Rule 5 does not apply when a uniform citation is used, a provision that may not be enforceable.

Article VI, Section 3 of the North Dakota Constitution gives the Supreme Court the power to promulgate rules of procedure and evidence. While the legislature may adopt statutory rules of procedure, when there is a conflict between a statutory rule and a court rule, the court rule prevails. Traynor v. LeClerc, 1997 ND 644, ¶ 8, 561 N.W.2d 644. In other words, the legislature does not have the power to supersede a court rule, as it appears to be attempting to do in the current uniform citation statutes.

The Chief Justice clearly desires the Committee to work with Mr. Erickson on this issue, even though he also has concerns about uniform citations that he expresses in his letter. The Committee, therefore, may wish to discuss whether Rule 5 could be amended to accommodate uniform citations and to establish a procedure that would be applicable statewide to these citations. A copy of Rule 5 is attached for the Committee's reference.

After the Committee examines this issue and discusses possible amendments, staff can prepare a draft proposal for further review and possible distribution.



North Dakota Supreme Court Committees ◀▲□/?
Joint Procedure Committee - January 2009 Agenda

MEMO

- HOME
- OPINIONS
- SEARCH
- INDEX
- GUIDES
- LAWYERS
- RULES
- RESEARCH
- COURTS
- CALENDAR
- NOTICES
- NEWS
- FORMS
- SUBSCRIBE
- CUSTOMIZE
- COMMENTS

TO: Joint Procedure Committee

FROM: Mike Hagburg

DATE: January 9, 2009

RE: Rule 5, N.D.R.Crim.P., Initial Appearance Before the Magistrate

At its September meeting, the Committee discussed a proposal by McLean County State's Attorney Ladd Erickson regarding uniform citations in criminal cases. The Committee directed staff to contact Mr. Erickson and obtain more information and a definite proposal.

Mr. Erickson has now provided the Committee with proposed amendments to Rule 5. The amendments are intended to complement proposed statutory changes contained in H.B. 1288. Mr. Erickson has indicated that if the statutory changes are passed, they will not become effective until Jan. 1, 2010. The delayed effective date is designed to give the courts ample time to address the changes.

The Rule 5 proposal is attached along with a copy of H.B. 1288 and Mr. Erickson's previous letter to the Court.

[Top](#) [Home](#) [Opinions](#) [Search](#) [Index](#) [Lawyers](#) [Rules](#) [Research](#) [Courts](#) [Calendar](#) [Comments](#)

(e) Uniform Citations. Notwithstanding Rule 5(a), a uniform citation may be used in lieu of a complaint and appearance before a magistrate, whether an arrest is made or not, for an offense that occurs in an officer's presence or for a motor vehicle or game and fish offense. When a uniform citation is issued for a felony offense, other than a felony proscribed in the motor vehicle title, the prosecuting attorney shall also subsequently file a complaint that complies with subsection (a), and in any circumstance where an individual is held in custody they must be brought before a magistrate for an initial appearance without unnecessary delay.

EXPLANATORY NOTE

Rule 5 was amended effective March 1, 1990; January 1, 1995; March 1, 2006; June 1, 2006;

Rule 5 is derived from Fed.R.Crim.P. 5. Rule 5 is designed to advise the defendant of the charge against the defendant and to inform the defendant of the defendant's rights. This procedure differs from arraignment under Rule 10 in that the defendant is not called upon to plead.

Subdivision (a) provides that an arrested person must be taken before the magistrate "without unnecessary delay." Unnecessary delay in bringing a person before a magistrate is one factor in the totality of circumstances to be considered in determining whether incriminating evidence obtained from the accused was given voluntarily.

Subdivision (a) was amended, effective January 1, 1995, to clarify that a "prompt" judicial determination of probable cause is required in warrantless arrest cases.

Subdivision (b) is designed to carry into effect the holding of *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694, 10 A.L.R.3d 974 (1966). Because the Miranda rule is constitutionally based, it applies to all officers whether state or federal. One should note that the protections required by Miranda apply as soon as a person "has been taken into custody or otherwise deprived of his freedom of action in any significant way", while the requirement that an accused be taken before a magistrate is applicable only to an "arrested person". The Miranda decision is based upon the Fifth Amendment privilege against self-incrimination and holds that no statement obtained by interrogation of a person in custody is admissible, unless, before the interrogation begins, the accused has been effectively warned of the accused's rights, including the right not to answer questions and the right to have counsel present.

Senator - here is the background on HB1288:

SECTION 1 changes the title of the statute so clerks of court stop incorrectly sending judgments to DOT that mistakenly put points on a defendants license for *Fleeing in a vehicle*, when the person actually was *Fleeing on foot*. This amendment is intended to reduce government error.

SECTION 2&3 updates the two uniform citation statutes to address a constitutional problem wherein the statutes currently say that you don't have to follow the Rules of Criminal Procedure. Since these statutes were last worked on the Court has held that our state constitution gives supremacy to court rules over statutes. I am working with the Court's Joint Procedure Committee on this and that is why this bill will not take effect until Jan. 1, 2010. The Court needs time to do their rule making. On page 2, lines 22-25, a persons hunting, fishing, and trapping privileges are suspended if they skip out on court and a warrant is issued. This is the current law in the uniform game compact which we are in with 35 states. This language creates uniformity in treatment and allows for the same type of suspension of privileges for residents that currently only impact nonresidents that avoid court. In SECTION 2 the GF is not granted additional jurisdiction, if somebody asks. "Sovereign lands", means water bodies. This amendment places current law in this statute so the Court can address GF citation procedures for all lands the GF currently has jurisdiction over.

SECTION 4 gets rid of the dual speeding ticket hearings. This only effects noncriminal traffic cases and does not change a persons right to apply for a supervisory writ to the SC if a district court is acting beyond its jurisdiction. (Current law does not allow for a factual finding appeal to the SC on noncriminal traffic cases.) The current law appears to be a hold-over from the county court system which was eliminated in the 1990's. There is no legitimate reason for two speeding tickets hearings, and it costs the state wasted witness fees and police officer time.

If you have any questions feel free to call 400-3027 Thanks Ladd