

2011 HOUSE JUDICIARY

HB 1310

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1310
January 19, 2011
13105

Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1310.

Aaron Birst, ND Association of Counties: As I mentioned before the Association of Counties is an umbrella group. Under the umbrella we have various member groups, such as states attorneys, sheriffs, officers. The states' attorneys have reviewed this bill and technically this wasn't a request from the states attorneys to the Legislature. Rep. Dahl did bring this to us and asked for our input. The bill, under current law, the cities that have municipal courts, have a court but it's not a court of record. The general charges that they try are DUI cases, anything that is a B misdemeanor or below under the City Ordinance. Under current law, you can appeal your case to the district court. If you get pulled over in city court and you don't want to have the city judge hear the case, you can file it in the district court. A number of defendants sometimes go to the district court those cases under the perception, whether it's true or not, that they're going to get a better sentence, or fairer treatment, or something of that nature and then transfer it, plead guilty, and then hope for a better sentence. This bill attempts to say if you transfer the case to simply plead guilty, that it will go back to the city court and they will have jurisdiction to do the sentencing. That was the intent of the bill, to be an equalizer. Certainly if someone wants to go to the district court and have the case tried, and have their jury trial rights, they have that ability under the bill. This is just putting the case back to municipal court for sentencing. I do have a representative from Williams County State's Attorney's Office, who is here who can also talk about this. The reason that the states attorneys felt that this was a good bill is because these cases, especially in large jurisdictions have a tendency of piling up in the district court, when everyone bumps their case to district court and the states attorneys pay a price for that, having to have their court calendars also clogged because of that move.

Rep. Delmore: Will there also be a cost savings for the person that was intending to move something to district court. Would they still have to pay that fee or because it goes back to municipal court would the fee not be paid?

Aaron Birst: I suppose it depends on the actual sentence. The fee for transferring, I don't believe there is a filing fee process. The fee or fine would be what the judge imposes, whether it's from the city side or the district court side.

Rep. Delmore: It seems to me that it's a \$100 minimum for me to transfer a case from municipal court to district court, at my expense. I'm almost certain that it is at least \$100. If I don't get heard in district court, it would seem to me that if I've paid that \$100 I should get that money back or I shouldn't be forced to pay it in the first place.

Aaron Birst: I honestly don't know if there is a transfer fee.

Rep. Onstad: You mentioned "not a court of record", what do you mean by that.

Aaron Birst: Meaning the proceedings aren't transcribed like they are in district court. That is why you have the right to appeal to the district court, to have it as a court of record. This bill, as I understand it, would not change that. If you still want that proceeding, you can do it; it's just simply if you transfer to plead guilty for the perception of a lighter sentence. The perception is that you get a better deal at the district court, that may not be reality, but it does create more litigation costs.

Rep. Koppelman: This would be upon the request of the prosecuting attorney from the city, is there any reason that the defense attorney might want to be offered the same privilege or not.

Aaron Birst: My understanding is the defense attorney would understand that there not getting the benefit of the bargain for going to district court to plead. I think it is offered to them. I think they do have that ability.

Rep. Klemin: I'm having a little trouble reading this bill, given what you said the intent was. It doesn't read that way, as I see it.

Aaron Birst: We weren't drafting the bill, we agree with the concept. If there are potential fixes to the bill, we certainly wouldn't have a problem as long as the intent was taken care of, we would support that.

Rep. Klemin: The way it reads, if the defendant pleads not guilty, the city prosecuting attorney can request the case to be transferred back. That's the whole point of transferring it to the district court isn't it.

Aaron Birst: Correct, I see your reading of that. The point would be that, at some point, it gets kicked back for the sentencing.

Rep. Klemin: I think if the word "if" was "unless" it might be better, but I'm not sure.

Aaron Birst: I defer to the bill sponsor. I'm just here to support the concept.

Chairman DeKrey: Thank you. Further testimony in support.

Nathan Madden, Asst. State's Attorney, Williams County: The fees, in Williams County, are handled as follows. If a criminal matter is transferred up to district court there is a \$250 fee that attaches for witness fee, victim witness coordinator fee, indigent fee, those types of fees. That's how they are handled out there. I don't know how other counties handle it, but that's how it's handled there. I, too, am here to support the concept of basically trying to prevent judge shopping. Out in our county, sometimes we even have prosecutor shopping. Defendants will try to transfer something to district court, thinking I will get a different prosecutor. Our city prosecutor takes the case up in district court. There are times when we have had things like sentencing discrepancies, which do favor transfer. Just as a quick note, if somebody steals \$50 like an Xbox game from Wal-Mart in Williston, in city court they will sit 10 days. In district court, they said no time. There is a perception that we want to move these cases to district court because there are pluses and minuses. While there are some issues with the bill, I'll agree with that. There needs to be some way to de incentivize transferring cases out of the originating court to hear them because they are B misdemeanors or infractions, or of that nature, and keep it where they actually belong. It doesn't clog the state's attorney office out there; it clogs the district court's calendar. Every week when I go in for general master calendar, misdemeanor court, etc. we have city cases that have been transferred up from city court. So it starts adding onto the district court's calendar and starts causing problems. As Mr. Birst stated, sometimes this is done simply to try and get a better deal, or to somehow avoid consequences of what happens. I believe it is appropriate, that if you're just trying to do an end-run around the system, if you're going to transfer it to district court for a jury trial, that's one thing. If you want it there for a record of the proceedings, that's one thing. If you want it there simply to try to get a different prosecutor or different judge, or try to get a different sentence, that's something entirely different. Judge shopping can happen. It's more common at the federal level where you try to find the district that's most favorable for your proceeding. I think that the city court system leaves things open for abuse at the moment.

Rep. Onstad: If the request to go to district court is approved, and then upon finding of guilt, you're saying that the sentencing part should be back in municipal court, not stay in district court.

Nathan Madden: This bill is trying to deal with transferring case to district court and pleading guilty. Not transferring it for trial, not transferring it for record, but transferring it simply to get a different judge, different prosecutor, or a different sentence. That's what this bill is trying to address. Most defendants aren't going to do a jury trial for a B misdemeanor. If you have an attorney, you're paying that attorney thousands of dollars to handle something that is a B misdemeanor to take it to a jury trial. A lot of times they will get transferred up, juries will get demanded and

then the whole matter will settle out. The bill doesn't affect taking it up to district court, taking it to jury trial.

Rep. Onstad: The original question was it goes to district court, he pleads guilty, then according to this, upon request of the city prosecuting attorney, the matter must go back to municipal court.

Nathan Madden: Yes.

Rep. Klemin: The way the bill is written right now, it doesn't seem to say all of that. It seems to say the exact opposite, the way I see it. If the defendant pleads not guilty they can transfer it back. I think it needs to be revised somewhat to be consistent with the intent, but I guess my question is how do you know until he actually pleads guilty, that that is what he intends to do.

Nathan Madden: Well, that is an interesting question. In trial practice, there is a jury instruction relating to intent that says you can't open up the skull and take a look at the mind to figure out what is going on inside it. That is an interesting point, I can understand that position; however, I think you can look at intent, when they transfer it to district court and the very next thing they do at the next appearance, is plead guilty to it. I think one could look at it from the standpoint, if there is no attempt whatsoever to go through the jury trial process, if they never really request a hearing, if they come in and do a Rule 43, which is criminal rule 43, written entry of guilty plea. They come in, they don't take advantage of the district court system, they just transfer it up and do the written entry of plea and they're done with it. That demonstrates quite clearly the intent not to have a trial, not to take advantage of the things that can be done in district court; but simply a means to get it to the next level.

Rep. Klemin: So the defendant stands up in court and says I plead guilty and the prosecuting attorney from the city immediately stands up and says he wants the defendant remanded back to municipal court. Is that the way it's going to work.

Nathan Madden: I'm not exactly sure in the final bill. As you said it needs some tweaking, but the general consensus is that if you have an entry of guilt, via plea or rule 43, that it be transferred back to municipal court. I don't know if that would be in the final version, something that is automatic or something that would have to be done by motion of the state.

Rep. Klemin: But if the person pleads guilty in the district court, as a court of record, the judge then has jurisdiction over that case and the sentencing; the judge would then remand back to municipal court without a change in the plea and the municipal judge would then enter the sentence. Is that the idea, even though that person didn't enter a plea of guilty before the municipal judge?

Nathan Madden: It would be something along those lines. Again, I don't know what the final bill language would like that.

Rep. Klemin: How does that comport with due process, if a person's entered a plea in one court and gets sentenced by another court.

Nathan Madden: That is an interesting question. Either that, or there needs to be uniformity among the court systems. I can see some arguments with due process being made; however, the other solution might be to increase judicial supervision to make sure that sentencing guidelines are followed equally at all levels of the court system.

Rep. Boehning: Why would the city want it, every time I listen to the city prosecutor, he's always complaining that they are really busy, they don't have time to do it, and they need more staff, etc. Is it that they want the revenue off the fines when they know someone is going to be pleading guilty; that they will automatically get the funds? What going on with that. I always hear that municipal courts are so busy, but now we want to send everything back to them.

Nathan Madden: This bill addresses, not so much revenue, but it addresses discrepancies, as noted. If someone steals \$50 Xbox game from Wal-Mart, if it goes through city court, they are looking at 10 days in jail, it is a non-essential item. Williston municipal court will sentence somebody to 10 days for stealing a non-essential item up to \$250, or a combination of non-essentials. You go to Wal-Mart, steal \$500, which is a C felony, you get a suspended sentence in district court. So they're trying to figure out a way to close those gaps. As far as fines and fees, city court in Williston doesn't have mandatory fines and fees. They don't have the \$250 fee; however, city courts are a little more aggressive sometimes in collecting fines, fees, restitution, damages, etc. In city court, I also do some prosecuting in city court in Williston. In city court, if a defendant does not pay their fines, fees and restitution, they are held in contempt of court. As everybody knows, Williston has an oil boom. Jobs are everywhere; there are more jobs than there are people. So when a defendant comes in and says to the judge that they haven't paid because I haven't found a job, the city court's reaction is here is a complete listing of jobs, why haven't you found something out there. In district court, there have been times when fines, fees and restitution, in very large amounts, \$40,000, \$42,000 have sat unpaid for years because there is no aggressiveness in trying to get those. Part of it is trying to collapse the disparities in sentencing, collections, those types of activities. It isn't so much about the monetary aspect; because at least the city of Williston's municipal court doesn't collect mandatory fees. There may be some fines for contempt of court, etc. but in our area, it isn't a monetary issue.

Chairman DeKrey: Thank you. Further testimony in support of HB 1310.

Jerry Hjelmstad, ND League of Cities: Rep. Dahl had also contacted us about this bill draft. Our understanding of the bill draft, was that in cases where the defendant requested the case be transferred to district court for the purpose of exercising their right to a jury trial and then later on either pled guilty or had a plea agreement, then

that case would be remanded back to the municipal court. The idea behind it is to deter defendants from automatically trying to get the case transferred to district court when they didn't really intend to exercise their right to a jury trial. I believe there is a typo in the bill. On line 11, where it says "not guilty", I think it was intended to read "enter a plea of guilty" and Rep. Dahl would be able to verify that. The idea is if this deterrent was in place, it would prevent a lot of people from automatically wanting to transfer the case to district court when they really did not intend to seek a jury trial.

Rep. Klemin: What about the next line, then, if the defendant waives a jury trial, it doesn't mean that there isn't going to be a trial, it's going to be a bench trial. Why should it go back to municipal court, you still get the trial; or, upon a finding of guilt, that sort of presumes that there has been a trial and the person has been found guilty. I don't know why it would go back to municipal court. Is that the intent there?

Jerry Hjelmstad: I'm not sure what the intent was on that. Our understanding was that it would just prevent cases from the defendants claiming that they were going to exercise their right to a jury trial when they really didn't intend to do so, and were going to plead guilty or have a plea agreement.

Rep. Klemin: So if a person wanted to have a bench trial in a court of record, like the district court, he would not be able to do that, if the city prosecuting attorney requested a remand back to municipal court, you then wouldn't get a bench trial in a court of record.

Jerry Hjelmstad: Under the way this is drafted, I don't believe they would. I'm not sure if that was our understanding of what the bill was going to be when Rep. Dahl had talked to us about it. Our understanding was that it would impact cases where they were only transferring if they exercised their right to a jury trial and really did not intend to exercise that right to a jury trial.

Chairman DeKrey: Thank you. Further testimony in support of HB 1310. Testimony in opposition to HB 1310. We will recess the hearing.

Chairman DeKrey: We will continue the hearing of HB 1310.

Rep. Dahl: Sponsor, support. I introduced HB 1310. I am a part-time municipal prosecutor for the city of Grand Forks. This is an issue that has come up during my short tenure as an attorney. What happens is when something is cited pursuant to a municipal ordinance it goes to the municipal court. If it's a criminal offense, the defendants have the right to a jury trial, and actually because of a quirky decision in the Supreme Court, they now have the right to a jury trial on a traffic violation. They can make that jury request and transfer over to the district court. If they want to do that, that's fine, they have a right to a jury trial; I'm certainly not trying to interfere with that in any way. But what happens is they end up getting lighter sentences in district court. So what you see is a lot of transferring and then they'll enter a guilty plea or ask for a bench trial. This bill is seeking to accomplish, and I have a couple

of small amendments (see attached 1), is to maintain their right to a jury trial. If they want to transfer to the district court they may still do that, but if they want to plead guilty before that jury trial, then it should be remanded back to the municipal court. Additionally, if they want a bench trial, in front of a judge, that also goes back to the municipal court. That was what they were entitled to in the first place; in the municipal court they get a bench trial. So we're not taking any rights away, but we are trying to address the sentencing issues. Just as an example, there was a gentleman who was intoxicated and tried to use a false ID. When he did that, he basically told the clerk, well I'm going off to college in a little while, and I want to see if you think I'll pass so that when I get to college I can use this to buy alcohol. This was kind of a test run. Well, he transferred over to district court. In the municipal court, he probably would have gotten a deferred imposition of sentence on his minor, that was a first offense, but he would not have received a deferred on the false ID, the judge in our court considers that a very serious violation of the law and he probably would have had \$400 fine and some suspended jail time. Because he transferred over to the district court, he got two deferred sentences, a deferred on his minor, a deferred on the false ID charge. When they assessed those fines, there is a \$100 facility fee and \$125 court administration fee, those all go directly to the state, so the city doesn't get anything. I don't want to make this about the money issue, but that is one practical part that is impacted. I think that the purpose of the municipal courts is to streamline some of those smaller offenses, so we don't clog up the district courts who deal with very serious offenses, the higher level drug offenses, the GSI, murders, domestic violence, etc. This bill is also not to criticize our district court judges. We have excellent district court judges; it's just that when they see this smaller offense, that's generally what they do with them; they give them deferred sentences, which they wouldn't have received had they stayed in municipal court. The last thing I would just like to note is again, we're not taking anybody's rights away. If you're convicted in the municipal court on a criminal violation and even on some civil violations, you have the right to appeal to the district court, and in the district court you will have a trial de novo, which means that you get a new trial. Nothing in the municipal court counted. You get to start all over and can have a bench trial there, so that's still a possibility, that's not impacted by this bill. I also have two letters from two municipal court judges that I would like to distribute (see attached 2 and 3). Both judges lay out some of the statistics from their court. If you look at Judge Eslinger's letter, it says that 140 requests for jury trial were transferred to the district courts. Of those 140 cases, only 7 were tried and only 3 of the 7 resulted in an actual jury trial. This is viewed as an issue of forum shopping, trying to pick an easier court to get a lighter sentence. Explained the amendment (see attached 1). On line 11 it should say when they enter a plea of guilty, strike the word "not" and then on line 12 delete the phrase "or upon a finding of guilt", which I believe, if I've read this correctly; if they have a jury trial, they should be sentence in the district court because that was where the jury trial was held.

Chairman DeKrey: How about on line 10, where it says "if the defendant" would it be better to say "unless the defendant" with those changes.

Rep. Dahl: If the committee thinks that wording is clearer, I wouldn't have a problem with that.

Rep. Klemin: Just a question, it's not entirely clear to me of the intent the way you explained it. It was explained earlier that the intent of this bill was that if a defendant requests a transfer, with the intent of pleading guilty it would be transferred back to municipal court. Our question was how you know he's going to plead guilty, until he actually does it. Then once he has pled guilty in the district court, what happens, would it be remanded back to the municipal court for sentencing. It seems to be kind of a problem with jurisdiction. Once the district court judge has taken jurisdiction and the person appears before the district judge and pleads guilty on the record, how can it be transferred to a different judge for sentencing who never saw him to begin with?

Rep. Dahl: One way to look at it, you could remand it to the municipal court for sentencing. When folks ask for a jury trial, sometimes it's hard to define what they are intending to do. Some folks just really want a jury trial. Others perhaps just want to delay the process so that they can get their license reinstated if it's driving under suspension offense. I guess my intention with this bill, is that at some point, they would have to indicate to the judge whether they actually want to go through with the jury trial. Usually we have what's called a pre-trial conference before a jury trial, and that's the last chance for plea agreements. So at the point, or if the defendant wants to change their plea before the jury trial, then my goal in this bill, was that it would be remanded back to municipal court and it would only stay for sentencing in the district court if they actually went through with their jury trial. That was my intent with this bill.

Rep. Klemin: So a person appears in the district court, pleads guilty, and the city prosecuting attorney immediately stands up and moves the court to remand the case back to municipal court for sentencing, or does he have to plead back in municipal court again.

Rep. Dahl: I'm sure the judge would go through a process as well in municipal court. When the case does get transferred back, they would enter a plea of guilty over there. I don't know if they actually have to enter a plea of guilty to this judge, what we're trying to prevent people transferring and then entering a guilty plea over in the district court. There has to be some process to remand it back to the municipal court, otherwise you don't really solve the issue that we're trying to look at in the first place.

Rep. Klemin: That's my problem, there seems to be a missing step in here. So once they pled guilty in district court, I don't see how the judge can remand the case back to a different judge to sentence.

Rep. Dahl: I think that's the intent of this bill. That the district court must remand it back to the municipal court from which the transfer occurred for conclusion. I mean you can read that to say that conclusion means sentencing.

Rep. Klemin: Once it goes back to municipal court, can a defendant say well, I've changed my mind, I really want a jury trial now. Then what happens.

Rep. Dahl: I think when they enter a plea of guilty in the district court, they are waiving their right to a jury trial.

Rep. Klemin: So this is where my problem is. We've got the person pleading guilty in one court to a district court judge, and the municipal court judge who did not receive the guilty plea is actually deciding what the sentence would be.

Rep. Dahl: In the district court, when a person enters their plea of guilty, the judge goes through all their rights with them, so at that point in time, they are advised that they are giving up their right to a jury trial. Their paperwork would get transferred back to the municipal court and that would be indicated. I'm sure the municipal court judge will have the record from the district court indicating that he pled guilty and waived his right to a jury trial. So I don't think he can get into that game of going back and forth between the two courts.

Rep. Klemin: Is this going to open a problem where the defendant says, well I didn't understand that I was giving up my right to be sentenced by the district judge, who I pleaded guilty to, is that going to be part of what the district judge tells the defendant, do you understand by pleading guilty I am not going to sentence you, the municipal court judge is going to do it.

Rep. Dahl: For example, on a class B misdemeanor, you know you can be sentenced up to \$1,000 fine and 30 days in jail. You know what the upper guidelines of the sentencing are. I don't know that it's a right to be sentenced by one judge or the other.

Rep. Klemin: It just seems kind of contrary to our system of justice, to have someone plead guilty in one court to one judge, and then have another judge in another court actually do the sentencing.

Rep. Dahl: I agree it's not perfect. But the system that we have right now, when you look at the statistics from Fargo and Grand Forks, where 140 people are transferring and only 3 of those cases were tried and that also seems contrary to our system of justice.

Rep. Klemin: Judge shopping is nothing new, it happens all the time. It seems to be pretty imbedded in our system of justice, actually.

Rep. Dahl: It doesn't mean we can't try to fix those places where it does happen.

Rep. Klemin: I'm not sure what the procedure would be here, but the defendant in municipal court should be informed somehow that unless you have a jury trial in the district court, it is going to be automatically sent back to municipal court.

Rep. Dahl: I certainly think that is a procedure that could be incorporated. They do read through a whole list of rights including their right to a jury trial. I think that something as a practical matter could be built in and if we want to make that a part of this of this bill, I certainly wouldn't have an objection to make clearer, that the defendant understands what their rights are. Again, we are not restricting their rights, they still are entitled to a bench trial in the municipal court, they are still entitled to a jury trial in the district court, and if they have a bench trial in municipal court, this does not impact their right to have a trial de novo in the district court on appeal.

Rep. Klemin: I have a problem with a defendant entering a plea in one court before one judge and having it go back to a different court with a different judge to enter sentence. It seems to me that it would be better if that person never had the opportunity to enter a plea of not guilty in the district court, unless you have a jury trial, it automatically goes back to municipal court.

Rep. Dahl: It would be my hope that defense attorneys and pro se defendants would understand that if you transfer for a jury trial, you better be serious about it, or it comes back. I would hope to head off some of those transfers if they aren't serious about having a jury trial in the first place.

Rep. Delmore: Is there any reason other than requesting a jury trial for me to go to the district court. That's the only reason I would transfer it, not to have a record of it or whatever.

Rep. Dahl: The municipal courts are not courts of record, so the legislature has made clear that a transfer to the district court is for a jury trial. The municipal courts are not allowed to conduct jury trials. Because that offense was cited into the municipal court to begin with, that would be the only reason to transfer it to district court. Legally speaking, again the purpose of this bill is because practically speaking, they are getting lighter sentences. There is a sentencing disparity.

Rep. Delmore: There's also a cost to me to transfer it to district court. What happens to that fee when I paid it and now they are sending me back to another court, to another judge to sentence me. Do I get my fee back then, what happens with that. That's a lot of money.

Rep. Dahl: There is no fee to transfer to the district court, that's my understanding. They have never been charged a fee to transfer from the municipal court to the district court.

Rep. Delmore: I would really like clarification on that. My understanding has always been we have a fee when you go to district court to file that.

Chairman DeKrey: The intern will research that issue.

Rep. Dahl: I'm fairly certain that doesn't happen, but certainly would be open to any clarification. Even if there is a fee, which I'm not aware of, I certainly would not support another fee that we've mandated by law to transfer it back.

Rep. Steiner: Why do you think this is happened in Fargo and Grand Forks. Is it because the district judge might be elected, or you just have a coincidence that those sentences are lighter, is it happening in every city.

Rep. Dahl: I believe the city of Williston's state's attorney testified earlier. I believe it is happening not just in Grand Forks, Fargo, but he indicated that it's also happening in Williston. I think the issue is, and again it's not a criticism of our district court judges, they are excellent judges, but I think the range of cases that they see, they deal with very serious offenses. When they see a noisy party violation come through, they give deferred sentences on all kinds of offenses in the district court, because their range is so broad. Our focus in municipal court is definitely narrower, it's on class B misdemeanors and civil offenses. The district court judges try to be consistent with one another, so if you have one judge that is consistently gives deferred sentences on any class B misdemeanor first offense, then I think you'll see coordination with the other judges to try and do that. The district court judges have a different idea of how these folks should be sentenced versus the municipal court judges, and it leads to a disparity.

Rep. Klemin: I've been struggling with this language that's in here and the amendments that you've brought forward. I had some alternative language that I'd like you to think about. Instead of what you have here, if we said instead, "after transfer to the district court, if the defendant thereafter waives a jury trial, the matter must be remanded to the municipal court". If he requested a jury trial, he gets transferred to the district court, after transfer to the district court if the defendant then waives the right to a jury trial, it would get transferred back to the municipal court.

Rep. Dahl: That may be workable language, I would certainly be willing to sit down if you feel more comfortable with that language. I would be open to that.

Rep. Klemin: It's going to give the city prosecutors a lot more cases to work on.

Rep. Dahl: The other issue I wanted to address, is the language "upon the request of the city prosecuting attorney". I wanted to leave that in there, not because of a power struggle, but sometimes you have defendants who have a charge that goes to municipal court (such as DUI), but in the course of that DUI they also found meth. So they've got one charge in the municipal court, one charge in the district court, and sometimes the prosecutors will work together to reach a global settlement

agreement that could include sentencing in the district court if that's part of the negotiations, so I also wanted to explain to the committee why that language was in there.

Rep. Klemin: Well that's really two different situations, isn't it, with the two different offenses, one of which is not a municipal court offense; so you would want to have it, even if the person waives a jury trial, he is not going to get back into municipal court unless the city prosecutor asks for it to go back.

Rep. Dahl: Yes, I did consider taking that out because I understand how it can look. I'm just saying, that for practical reasons, it happens all the time. Cases are bifurcated between the municipal court and the district court. That will happen regardless of whether we have this bill or not, those cases are going to be separated. Sometimes the state's attorney will say, we'll dismiss this possession of paraphernalia charge if you plead to the municipal court offense. Part of that plea negotiation may be that we keep all the sentencing in the district court.

Rep. Koppelman: With regard to the different practices of the judges at various levels. I understand what you're talking about and what the bill seeks to do. But it does raise a question about our system of justice. When we sit here in the legislature and assign penalties for offenses being infractions, class B misdemeanors, whatever they may be, then we look at criminal penalties and we look at the cheat sheet that we have, and what the penalties for those crimes are, it does tend to skew things where, if our system is such that if through one judge's eyes something is a serious crime that needs to be penalized seriously under what the law allows, and under another judge's eyes, merely because he/she looks at a lot more serious cases, that's no big deal let's defer the sentence. I understand that it happens and I understand why. What is your observation as both an attorney and a legislature as to how that might skew things.

Rep. Dahl: That's always the tension between the legislative branch and giving judicial discretion. We've defined the upper boundaries of what someone could potentially be sentenced to. For example, on a Class B misdemeanor, 30 days and/or a \$1000 fine. Again it's hard to get into the minds of the district court judges to know what they are thinking. I don't think they are flippant about it, and I'm not suggesting that they are. But I just think that the range of cases changes their perspective. With the municipal court judges, certainly the range of cases that they look at are different. They are both elected by the people in the county. This is happening all across the state.

Rep. Klemin: Just a procedural question. The existing language says that the city shall provide a prosecuting attorney, and in the case of any indigent defendant, a defense attorney. We are all familiar with the Commission for Indigent Defense. Have you had any contact with that Commission to see what they think about this.

Rep. Dahl: My understanding is, the process is different for municipal defense attorneys. The judge has a list, so he goes through the financial criteria with the defendant and then I think it's a rotating basis by which the defense attorneys are chosen to represent that person, but the city bears the cost of representing that defendant, it's not the state.

Rep. Klemin: I understand that, but in the Commission statute, the city and the Commission can enter into an agreement with the Commission whereby the Commission handles the indigent defense for the cities. Now maybe that's not happening in Grand Forks, but I think it is in some other places.

Rep. Dahl: Certainly, indigent defense has not contacted me about this. I have not contacted them, I didn't really think that this would be something that would impact the way they do business. This is just merely changing the process, but I don't think it is changing anything substantive with regard to their legal counsel.

Rep. Klemin: I think I had some concerns with due process and defense procedure, and all we've heard from are prosecutors. We haven't heard from any defense people.

Chairman DeKrey: Thank you. We will close the hearing on HB 1310.

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1310
February 7, 2011
14128

Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at HB 1310.

Rep. Stacey Dahl: During the original hearing on HB 1310, there were some concerns about the existing bill as it read. Rep. Klemin had some good suggestions, so in front of you is the amendment, taking into consideration those suggestions. Basically in some areas it hog houses the bill and replaces the language from the bill by saying, "after a transfer to district court, if the defendant waives a jury trial, the matter must be remanded to the municipal court." If the defendant does not waive a jury trial, the district court shall retain jurisdiction for sentencing. I think the amendment accomplishes a few things. First, it clarifies some of the cumbersome language from the original bill. In addition to that, it addresses Rep. Klemin's concern about having one judge accept a guilty plea and then having it transferred back to the municipal court for sentencing. I think the way this is now written, it streamlines that process. This bill, with the amendments, makes a lot of sense. It is important to remember, that with these amendments, a defendant is entitled to and will receive a bench trial in the municipal court if that's what they want. They can still transfer their trial and have a jury trial in the district court, if that is what they want. In addition to that, if a defendant has a bench trial in the municipal court and thinks they were treated unfairly or inappropriately found guilty, they actually still have the right to a trial de novo, which means it's a brand new trial in the district court, a bench trial, and nothing in the municipal court would impact that new trial in the district court. I think that there are a lot of safeguards for that defendant. This bill will now streamline the process from what exists in practice today.

Rep. Delmore: Did you check and see if there is a fee paid to the district court and would that fee be returned to the defendant if the case went back to the municipal court.

Rep. Dahl: There are no transfer fees at all. A person is not penalized or assessed fees for transferring a case to the district court.

Rep. Delmore: There is no filing fee for that person either.

Rep. Dahl: No, there are district court fees that are assessed but basically it is in lieu of a fine, and so you may see a \$200 fine and \$225 in court fees for a total of \$425. In the municipal court, they just would have paid around that same amount and it just would have been a fine. Those fees are in lieu of a fine. They don't pay any additional funds.

Chairman DeKrey: Thank you. We will take a look at HB 1310.

Rep. Beadle: I move adoption of the Dahl amendments, which is numbered 1002.

Rep. Maragos: I second the motion.

Chairman DeKrey: Further discussion. Voice vote – motion carried. We now have the bill before us as amended, what are the committee's wishes.

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

Rep. Hogan: Second the motion.

Rep. Klemin: I think this makes it clear that if somebody wants to go to district court to have a jury trial, that's fine. If they change their mind when they get there, it goes back to municipal court.

Chairman DeKrey: Clerk will call the roll on a Do Pass as amended.

13 YES 1 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Klemin

VR
2/7/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1310

Page 1, line 10, remove "Upon transfer to district court, if the defendant"

Page 1, remove lines 11 through 13

Page 1, line 14, replace "for conclusion." with "After a transfer to district court, if the defendant waives a jury trial, the matter must be remanded to the municipal court. If the defendant does not waive a jury trial, the district court shall retain jurisdiction for sentencing."

Renumber accordingly

Date: 2/7/11
 Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1310

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Beadle Seconded By Rep. Hogan

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	* ✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	•	✓	Rep. Onstad	* ✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Klemin

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

REPORT OF STANDING COMMITTEE

HB 1310: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1310 was placed on the Sixth order on the calendar.

Page 1, line 10, remove "Upon transfer to district court, if the defendant"

Page 1, remove lines 11 through 13

Page 1, line 14, replace "for conclusion." with "After a transfer to district court, if the defendant waives a jury trial, the matter must be remanded to the municipal court. If the defendant does not waive a jury trial, the district court shall retain jurisdiction for sentencing."

Renumber accordingly

2011 SENATE JUDICIARY

HB 1310

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1310
3/8/11
Job #15100

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to transfers to district court

Minutes:

There is attached testimony

Senator Nething - Chairman

Representative Dahl – Introduces the bill – Explains the two court systems in ND, Municipal Court and District Court. Municipal Courts are set up to handle smaller offenses but have the capacity to handle Class B misdemeanors. She explains Municipal Courts cannot have a jury trial. She provides letters from Judge Eslinger and Judge Davies. She says often times when cases are transferred from Municipal Court to District court they often get lighter sentences. She relates one of her cases as an example. She explains what this bill does. She says with this bill the defendant would still be entitled to a bench trial in the Municipal Court, they still have a right to a trial in District Court.

Senator Sitte - Asks why there are so many transfers.

Rep. Dahl – Says there are different reasons for transferring. Sometimes it could be for a delay and possibly for the lighter sentences.

Senator Olafson – Asks why they get a lighter sentence in District Court.

Rep. Dahl – District Courts deal with more serious offenses and some of these offenses aren't so serious to them.

Senator Nething – Asks where the fines go.

Rep. Dahl – She said the fines stay in Municipal Court, if it gets transferred to District Court they are assessed \$225 in mandatory fees, those go to the State, and they would also pay a \$250 fine which is divided between the municipality and the district court.

Senator Olafson – Asked Rep. Dahl to look at some amendments he has.

Rep. Dahl – Looked over the amendments and feels they would blunt this bill.

Senator Nething – Reads over the amendment and asks if they're in agreement.

Rep. Dahl – She disagrees and gives her reasons why.

Senator Sitte – Asks if in most major cities there would be just one municipal judge.

Rep. Dahl – Thinks that is right.

Senator Sitte – Suggests the law is the way it is because people deserve a choice in judges if they have had several encounters with one specific judge.

Rep. Dahl – Said she agrees but the judges are elected, and if you feel you won't get a fair trial you can request a change of judge.

Senator Olafson – Asks if we adopt the amendment that won't address or solve the problem with people seeking a transfer to get a lower sentence.

Jerry Hjelmstad – ND League of Cities – In support of and feels it is a good change.

Bill Woken – City Administrator for the city of Bismarck – Said he consulted the city attorney yesterday and it was his opinion that this would be a favorable change.

Opposition

Kelly Armstrong – Attorney, Dickinson, ND – Says he transfers 100% of his cases out of municipal court because it preserves his right to a jury trial. He explains that often he won't have information back in 28 days. He goes on to explain how and why it is done in the smaller communities. He feels this bill is a one size fits all but it isn't that way. He says this isn't needed at all but if an amendment is added he would like to have the lawyers involved in a particular case to have some say on how it is handled. He said he would still move every DUI out of municipal court. He is also concerned that his clients will be paying fees twice.

Senator Sitte – Asks about the way Williston handles it.

Armstrong – Explains how he works with Ms.Schmitz, city prosecutor for Williston.

Rep. Dahl – Responds to Armstrong's remarks and says she will work with an amendment and work to make this a better bill so it works with all the communities in the state.

Close the hearing HB1310

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1310
3/21/11
Job #15773

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to transfers to district court

Minutes:

Senator Nething – Chairman

Committee work

Committee discusses the amendment brought in by Rep. Dahl. Senator Lyson asks if the cost still remains with the city.

Senator Olafson moves to adopt the amendment

Senator Lyson seconded

Verbal vote – all yes

Senator Olafson moves a do pass as amended

Senator Lyson seconded

Roll call vote – 5 yes, 0 no, 1 absent

Senator Sitte will carry

1310 (1)

11.0451.02002
Title.

Prepared by the Legislative Council staff for
Representative Dahl
March 8, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1310

Page 1, line 11, after "court" insert "unless the defendant and the prosecuting attorney agree that jurisdiction for the matter should remain with the district court"

Renumber accordingly

Date: 3/21/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1310

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

02002

Motion Made By Senator Olafson Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman			Carolyn Nelson		
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Senator

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

Verbal yes

Date: 3/21/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1310

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Olafson Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson		
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Sitte

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

REPORT OF STANDING COMMITTEE

HB 1310, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1310 was placed on the Sixth order on the calendar.

Page 1, line 11, after "court" insert "unless the defendant and the prosecuting attorney agree that jurisdiction for the matter should remain with the district court"

Renumber accordingly

2011 TESTIMONY

HB 1310

11.0451.01002
Title.

Prepared by the Legislative Council staff for
Representative Dahl
January 24, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1310

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Renumber accordingly

2



**CITY OF FARGO
MUNICIPAL COURT**

402 NP AVE N
P.O. BOX 49
FARGO ND 58107-0049

TELEPHONE: 701-241-1316
FAX: 701-241-1320

January 18, 2011

Representative Stacey Dahl
Sixty-second Legislative Assembly of North Dakota
Bismarck ND 58501

Re: House Bill 1310

Dear Representative Dahl:

This letter is written in total support of house bill 1310.

In 2010 we had 516 transfers to district court for jury trial, of those cases only 4 were actually tried by jury. In 2009 only 4 of 466 transferred cases were tried by jury, and in 2008 only 2 of 608 transferred cases were tried by jury.

It's obvious the original purpose of the transfer statute has been misused, and the proof is in the statistics alone.

If passed, this legislation will place the workload on the municipal judges of the state rather than on the district judges who already have more than sufficient caseloads. The appeal process would still be in effect, and justice would be best served by your bill.

Sincerely,

Thomas A. Davies
Judge of Fargo Municipal Court

TAD: sct





City of Grand Forks

1701 North Washington Street- P. O. Box 5324 - Grand Forks, ND 58206-5324

3
Municipal Court
Henry J. Eslinger
Municipal Court Judge

(701) 787-8160
Fax # (701) 746-2519

January 18, 2011

Sixty-second Legislative Assembly
of North Dakota
Bismarck, ND 58501

RE: House Bill No.1310

Legislative Assembly:

This letter is written for the purpose of voicing support for House Bill No. 1310 scheduled to be presented to committee on January 19, 2011 at 9:00 a.m.

This bill will essentially require that cases transferred to District Court for the purpose of a jury trial be returned to the Municipal Court if there is no jury trial.

It is common practice in my court that defense attorneys are requesting a transfer to District Court for a jury trial, not for the purpose of a jury trial but for the purpose of getting a lesser or more lenient sentence from District Court Judges.

Evidence for this abuse of the process is shown by statistics from our court where in 2010 there were 140 requests for jury trial which caused the cases to be transferred to District Court. Of those 140 cases only seven (7) were actually tried. Of those seven (7), four (4) were tried as a bench trial rather than a jury trial, and only three (3) of the 140 resulted in an actual jury trial.

This results in sophisticated "Judge shopping" whereby the integrity of this Court is being destroyed. I was elected by the citizens of this city and represent them. The appeal process would allow for transfers to District Court if oversight is necessary.

Henry J. Eslinger
Judge of Municipal Court
Grand Forks, ND



City of Grand Forks

Municipal Court
Henry J. Eslinger 1310
Municipal Court Judge

1701 North Washington Street- P. O. Box 5324 - Grand Forks, ND 58206-5324

(701) 787-8160
Fax # (701) 746-2519

January 18, 2011

Sixty-second Legislative Assembly
of North Dakota
Bismarck, ND 58501

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Henry J. Eslinger
Judge of Municipal Court
Grand Forks, ND

①

1310

**CITY OF FARGO
MUNICIPAL COURT**

402 NP AVE N
P.O. BOX 49
FARGO ND 58107-0049

TELEPHONE: 701-241-1316
FAX: 701-241-1320

January 18, 2011

Representative Stacey Dahl
Sixty-second Legislative Assembly of North Dakota
Bismarck ND 58501

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Sincerely,



Thomas A. Davies
Judge of Fargo Municipal Court

TAD: sct

11.0451.02001
Title.

Prepared by the Legislative Council staff for
Senator Murphy

March 7, 2011

②
1310

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1310

Page 1, line 11, replace "waives a jury" with "elects a bench"

Page 1, line 11, remove "does"

Page 1, line 12, replace "not waive" with "pleads guilty or is convicted following"

Renumber accordingly