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2003 HOUSE JUDICIARY

HB 1189

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1189

House Judiciary Committee

Conference Committee

Hearing Date 1-28-03

Tape Number	Side A	Side B	Meter #
1	xx		0-25

Committee Clerk Signature *Al Penrose*

Minutes: 13 members present.

Chairman DeKrey: We will open the hearing on HB 1189.

Rep. Wald: Introduced the bill.

Robert Keogh, President of Municipal Judge's Association: (see attached testimony)

Support.

Rep. Eckre: How many municipal judges are left in ND that don't have their law degree.

Mr. Keogh: Not exactly, around 40.

Rep. Eckre: Is it mostly the smaller, rural communities where that exists.

Mr. Keogh: In many cities over 5,000, the judge must be law trained.

Rep. Delmore: In the past, was there a risk with someone alleging that they couldn't do it.

Mr. Keogh: Well, yes. Prior to 1999, the law was that you could. Many cities or districts now have appointed magistrates by a judge. Yes, that's why we want the bill, to make sure there

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aren't any questions about it. We don't want there to be a question about the validity of the search warrant to be challenged.

Rep. Delmore: How many municipal judges do we have that are magistrates?

Mr. Keogh: 50 to 60 around the state. The numbers are declining in the rural areas.

Rep. Klemin: On line 17, what is the definition of "to issue search warrants for an area within the jurisdiction of the municipality". How do you define the area within the jurisdiction of the municipality. By zoning.

Mr. Keogh: Whatever the state has used.

Rep. Klemin: What if you issue a search warrant for an area that is outside of the city limits, how are we going to know whether that search warrant is going to be valid outside the city limits. How do we know where the jurisdiction of the municipal court ends.

Mr. Keogh: I don't know, that hasn't really come up. In some areas, the municipal judge is appointed as the magistrate by the district judge and then they are covered either way. That would be a question for the prosecutor to sort out. We try not to go outside the jurisdiction.

Rep. Eckre: On pg 5 of your handout, it shows the territorial lines as the jurisdictional area.

Rep. Delmore: How many of your municipal judges have had the magistrate appointment.

Mr. Keogh: We haven't tracked that.

Rep. Delmore: Do you have to be reappointed to something like that, if the district judge makes you a magistrate, do you have to be appointed every so often, so you can have this title?

Mr. Keogh: We assume we have the power for search warrants.

Rep. Onstad: How does this affect the reservations - tribal court. Do they have jurisdiction over tribal lands.

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Mr. Keogh: I don't have that problem, so I don't know.

Chairman DeKrey: Thank you. Anyone else wish to testify in support of HB 1189.

Tom Goven, Municipal Court Judge for the City of Valley City: I have been a municipal court judge since 1998. I am a current member of the Executive Board of the Association. Support. We have the authority to conduct trials and to handle all matters pertaining to the files, such as rule on the constitutionality of motor vehicle stops, probable cause to arrest, probable cause to search a person and also the admissibility of confessions or admissions. But because of this statutory glitch, we do not have the authority to issue search warrants, even for municipal ordinances. It would just seem like it is a logical connect that we should have the authority to cover those. This a broad based bill and covers just the general authority to issue search warrants. I would say that in rural areas, it may be impossible or very hard to get a hold of a district court judge at some point to issue a search warrant, thereby a municipal judge could do that for the city, thereby aiding law enforcement. Law enforcement typically for a known felony case, or that nature, they would go to the district judge first to get a search warrant. As far as education and training, it's true that a majority of our judges are not attorneys in the state, but the Supreme Court, through the state's court office, they provide annual training for us once a year. We can get the authority to issue search warrants by becoming a state magistrate through the administrative, by the presiding judge of the district, but this would give us statutory authority to be able to do that. My understanding of jurisdiction is that it covers the city plus one-half mile outside the city limits.

Rep. Kretschmar: Under current law in this section, when a municipal judge acts as a magistrate, it's only allowed to judges who are members of the bar.

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Mr. Goven: That's my understanding.

Rep. Kretschmar: Would a similar restriction help this law by issuing a search warrant.

Mr. Goven: It was the feeling of the Board, that we have so many members that are not attorneys, that they are currently appointed as magistrates and they have the authority under that appointment as the state magistrate to cover search warrants. The legislature could consider whether or not they limit it just to attorneys, if it were something other than municipal ordinances. Non-attorney judges can cover most cases, the DUI cases have to go to district court, but as far as the other types of cases, they have the authority to try, hear evidence, determine admissibility of evidence just as an attorney judge has.

Rep. Delmore: Are search warrants ever denied, and through this legislation, could a district judge say, no I don't want to issue a search warrant, and then they go to the municipal judge who says yes.

Mr. Goven: Search warrants are at times denied, I think law enforcement tries to cover all the bases. If a district judge denied it, I think law enforcement would probably not go to a municipal judge because if ultimately it was a bad search, it would be thrown out. Practically speaking, I don't think they would go from a district judge to municipal judge, because the case would most likely come up before the district judge that denied the search warrant.

Chairman DeKrey: Thank you. Further testimony in support of HB 1189.

John Olson, NDSA/NDPOA: Support. There are only 42 district judges that cover the entire state, and the municipal judges are helpful to law enforcement. The need is critical.

Chairman DeKrey: Thank you. Any further testimony in support? Any testimony in opposition?

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