

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2339

2001 SENATE JUDICIARY

SB 2339

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2339

Senate Judiciary Committee

Conference Committee

Hearing Date, February 5th, 2001

Tape Number	Side A	Side B	Meter #
1	x	x	24.7-end/0-14.1
Committee Clerk Signature			

Minutes: **Senator Traynor** closed the hearing on SB 2339: A BILL FOR AN ACT TO AMEND AND REENACT SECTION 40-18-15.1 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO TRANSFERS FROM MUNICIPAL TO DISTRICT COURT.

Senator Flakoll, representing district 44, supports SB 2339. (testimony attached)

Senator Traynor, do you have amendments drawn?

Senator Trenbeath, your attacking a time honored tradition. At the district court level a defendent has one shot at the judges. He can judge shop.

Senator Flakoll, one problem is they can chose.

Senator Trenbeath, so does the prosecutor.

Senator Flakoll, this bill would require the court attorney can't reverse the determination of a judge.

Senator Traynor, under your amendment, the city prosecutor would still have the opprotunity to remand the case to municple court unless there is a plea agreement.

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Senate Judiciary Committee

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Senator Falkoll, yes.

Judge Davis, Municipal Judge for the City of Fargo, appears in support of SB 2339. (testimony attached)

Senator Traynor, under the present law the defendant can transfer from municipal to district court.

Judge Davis, no.

Senator Traynor, the change says for the sole purpose of a jury trial.

Judge Davis, Yes. The problem is when they transfer over for jury trial and for a number of reasons change their plea. In Fargo, they move out of city court to district court where the sentence is less..

Senator Traynor, it strikes me, "for the sole purpose of exercising the defendant's right to a jury trial." Are we going into the defendant's mind, is this a problem to say sole purpose?

Judge Davis, I don't get hung up on words. I want to solve the problem and bring out the solution. I want it to make it clear that if you go to district court it is for a jury trial only.

Senator Traynor, if this becomes law is the request going to contain the language "I the defendant wish to move my case to district court for the sole purpose of a jury trial." Is it going to say that?

Judge Davis, I don't know. I can tell you right now that the demand we use in our city simple says I demand jury trial.

Senator Trenbeath, Do you have stats of the number of cases that go from district court and go to jury trial?

Judge Davis, no. The judges shouldn't be the way we chose cases. Most people don't plan jury trials.

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Senate Judiciary Committee

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Judge Henry Hessinger, municipal judge from Grand Forks. This problem is not just a Fargo problem. Minot doesn't have a recording process, so it will not show requests. Doubling of duties for judges is not necessary. Another question is home rule; this wouldn't work well. Resents when cases move from municipal court to district court. Percentage of cases that are pleaded out is the same in District and Municipal court. Having them go to municipal court from district court, is not a relevant question.

Senator Trenbeath, it is a relevant statistic because it goes against your contention to make deals. Would you share your data on this.

Senator Wante, what is your opinion on jury trials for small offenses?

Judge Hessinger, if there is jail time there should be a jury trial.

Senator Dever, if the defendant goes to a plea of guilty does the judge become part of the plea agreement?

Judge Hessinger, yes.

Charles Whitman, Bismark city Attorney, neutral on the bill. Good bill. Only concern with bill starts on line 22. Regards a transfer, then another transfer. Language is harsh to municipalities.

Senator Traynor, what does that amount to in dollars to the city of Bismark?

Charles Whitman, don't know. No problem with split in courts. The question is how do you handle a case if it goes from the district court to municipal court.

Senator Watne, Attorney, do you have a contract for indigent defense.

Charles Whitman, yes.

Senator Watne, does the city pay those fees?

Charles Whitman, yes.

Jerry Junstad, representing the league of cities, testifies in favor of SB 2339.

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Senate Judiciary Committee

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Senator Traynor, who made the decision in league of cities to support this bill?

Jerry Jumstad, a committee from around ND. I could get you the names.

John Olson, representing peace officers association, wants to oppose bill. However, this bill will be given support if Judge Davis amendments are put in. Charles Whitman's concerns are also concern of mine.

Senator Traynor, any suggestions raised by Mr. Whitman.

John Olson, all we're doing is a paper transfer. These things should remain in the city.

Senator Traynor, committee would have to look at another. Amend line 22-24.

Senator Traynor, closed the hearing on SB 2339.

SENATOR TRENBEATH MOTIONED TO DO NOT PASS, SECONDED BY SENATOR

WATNE. VOTE INDICATED 6 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING.

SENATOR TRENBEATH VOLUNTEERED TO CARRY THE BILL.

FISCAL NOTE

Requested by Legislative Council

02/05/2001

REVISION

Bill/Resolution No.: SB 2339

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$120,479	\$0	\$120,479	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

When a case is remanded back to Municipal Court for sentencing, a transcript would have to be prepared. The cost of preparing a transcript averages \$247.90. If one-half of the cases are transferred back to the Municipal Court for sentencing, the cost of preparing transcripts is \$120,479.40. If 80% of the cases are remanded, the transcript cost would be \$192,767.04.

The more difficult question is what impact this bill might have on jury trials. Each jury trial costs an average of \$850 in juror expenses. If 50% of the individuals take a jury trial rather than have their case returned to Municipal Court, the cost to the state would be \$824,500 per biennium. If just 20% elect to take a jury trial rather than have their case returned to Municipal Court, the cost to the state would be \$368,900. I have not included the possible increase in jury costs as an added expense because the possible increase in the number of jury trials is speculative. While it is speculative that this bill will increase jury costs, the possibility is real.

In the cities of Bismarek, Minot, Grand Forks, Fargo and West Fargo there were a total of 972 cases transferred from Municipal Court to District Court in 2000.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Keith E. Nelson	Agency:	Supreme Court
Phone Number:	328-4216	Date Prepared:	02/12/2001

FISCAL NOTE

Requested by Legislative Council
01/23/2001

Bill/Resolution No.: SB 2339

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
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Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

N/A

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

N/A

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Keith E. Nelson	Agency:	Supreme Court
Phone Number:	328-4216	Date Prepared:	01/24/2001

10508.0201
Title.

Prepared by the Legislative Council staff for
Senator Flakoll

January 24, 2001

PROPOSED AMENDMENTS TO SENATE BILL NO. 2339

Page 1, line 11, after the first underscored comma insert "or" and remove "or upon"

Page 1, line 12, remove "a finding of guilt."

Renumber accordingly

Date: 2/6
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2339

Senate Judiciary Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Trenbeath Seconded By Watne

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.		
Watne, D. Vice Chairman	X		Nelson, C.	X	X
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Trenbeath

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

REPORT OF STANDING COMMITTEE (410)
February 8, 2001 1:11 p.m.

Module No: SR-23-2728
Carrier: Trenbeath
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2339: Judiciary Committee (Sen. Traynor, Chairman) recommends DO NOT PASS
(6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2339 was placed on the
Eleventh order on the calendar.

2001 TESTIMONY

SB 2339

SB 2339 - - - Transfer of Cases
Senator Tim Flakoll, District 44 of Fargo.

Senate Judiciary Committee
Monday, February, 5, 2001

Chairman Traynor and members of the Senate Judiciary Committee. For the record I am Senator Tim Flakoll of District 44 in Fargo.

I sponsored this bill because I was made aware of a problem that has risen in our court system. The intent of SB 2339 is to **help close loopholes in the transfer of cases from Municipal Court to District Court and still give the defendant their due process with the option to have a jury trial.**

There are a number of examples of abuses across the state, but one example of the problem is in Fargo where last year alone, 507 cases were transferred up to District Court based on the intent of receiving a Jury Trial. Out of those **507 cases, only nine (9) went to trial.** The other 498 people plead out and did not pursue the jury trial that they sought in District Court. That translates to only 1.8% of the cases actually going through a Jury trial. This can set up "judge shopping" or cause problems by the repetition of tasks. Imagine having prepared to listen to 498 Senate bills and then never get the opportunity to hear them. But the bottom line is that it **smacks in the face of our state's current law which was designed to give the defendant the right to a jury trial.**

With you help, we can keep more of the cases at the local level (should the City request it) where they belong, but if a defendant wants to exercise his right to a jury trial (not shop for a lighter sentence), then allow them to transfer up to the District Court for a Jury trial. If a defendant does not want a Jury trial after transferring to District Court, remand the case to the Municipal Court. It is a matter of consistency, and removing loopholes in the law.

I am aware of at least two major issues that we have been asked to deal with this session concerning District Courts. First is the issue of Judge's salaries. This bill does not address that issue.

The second issue relates to the heavy case load in District courts. I believe this bill helps to address that problem. As you know, the District Courts have a heavy case load. If I were a District Judge I would certainly welcome this bill.

I would however like to look a closing one door that we unintentionally opened when we drafted this bill. Chairman Traynor with your approval, I would ask to submit amendments to the bill after my testimony. The intent is to require that once a jury trial is held and upon a finding of guilt, that the court that hears the trial will also sentence the guilty party.

As a legislator, I share your frustration when others circumvent the intent of our laws and I welcome the changes proposed in SB 2339.

I would be happy to answer any questions you may have.

