

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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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 Trenbath, 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 Jumstad, 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
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$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.*

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

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.

February 3, 2001

Mr. Chairman and members of the Judiciary Committee.

I am Thomas A. Davies, Municipal Judge for the City of Fargo, and I appear in Support of Senate Bill No. 2339.

THE LAW AND ITS' INTENT

Section 40-18-15.1 NDCC was enacted to provide a defendant charged in a Municipal Court with the right to a Jury Trial, and to provide for the division of fee's, a Municipal Prosecutor and a Municipal Public Defender in the District Court upon such transfer. It was a straight forward attempt to address a procedural problem. Section 40-18-15 as amended in 1973 Initially provided for a trial before a Judge in Municipal Court, and in the event of a conviction the Defendant could appeal the case to District Court where they could have a Jury Trial to which they were entitled by law.

This procedure proved cumbersome and resulted in multiple trials and was both costly and time consuming to the City and Defendants alike. The result was the amendment and re-enactment of Section 40-18-15 in 1991 to provide for a trial before the Court at the Municipal Level if the jury right was waived, and further provided that a waiver of jury at the Municipal level constituted a waiver of jury in the event of a conviction and a subsequent Appeal to District Court.

Page two

To eliminate the trial duplication, section 40-18.15.1 was enacted in 1995 to clarify the procedure. It provided the mechanism whereby the Defendant could by using the procedure set forth, transfer his case to District Court for Trial by Jury.

THE PROBLEM

A huge number of cases are transferring from Municipal Courts in the larger Cities by virtue of the Jury Demand process, (see statistics attached) and once in District Court plead or are otherwise dealt with without any jury trial. The purpose of the statute is for jury trial and the intent is abused.

There are many reasons for this abuse. Some defendants are Judge shopping (go to the court where the sentences are less severe); some transfer and hope the delay between arrest and arraignment will help them; others transfer because it is convenient for the attorney who may practice in District Court more than Municipal Court; some transfer for very legitimate purposes and with Jury intent and then change their mind----**all jurisdictions do not have this problem** however all should join in eliminating it.

The bottom line, as suggested by our prosecutors, and with which I agree, is that **the cases are local and should therefore be handled in the local court** and not be placed in the hands of District Judges (**who are overwhelmed with work, and underpaid**) and not in the hands of the defendants. (**Except of course in the case of the Jury trial**).

Page three

THE SOLUTION

The District Courts are overwhelmed and where Municipal Courts exist, should not be hearing cases that belong in the local Court except in case of Jury Trial. Keeping the Municipal Cases at the local level may do little to actually decrease the District Court workload, but it will give meaning, purpose and intent to the Jury Demand Statute, and **keep local matters in the local Courts, before the Judges whom the local populations elected to hear them.**

Senate Bill 2339 addresses these issues. The **Jury Demand** statistics which are attached to the copies of my remarks, which have been provided to each of you discloses the number of **Actual Jury trials**, and establishes without doubt the statute is not used as intended.

The proposed amendments are intended to limit transfer cases to those that actually go to the jury, and remand or return to the Court of original jurisdiction, those cases that do not go to jury trial. In the long run when individuals learn that to transfer for Jury trial means just that, the abuse of the process will stop and transfers will be confined to legitimate requests for Jury trial.

I have highlighted two area of concerns on the bill as presented this morning:

One relates to allowing the prosecutor to determine if the case stays in District Court after a Jury demand transfer--which gives the prosecutor the very Judge shopping ability we seek to stop--and gives the prosecutor access to a practice we wish defendants and their attorneys to cease using;

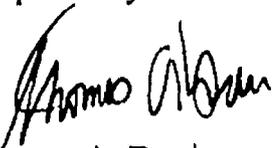
Page four

The second and by far the most troublesome is the provision that provides for a transfer back to the Municipal Court after a finding of guilt (presumably a jury trial). I cannot conceive of a procedure in the system that would validate a trial before a Jury in District Court and sentencing by a Municipal Judge who didn't hear the testimony. I assume District Judges and Defense attorneys alike, would object to this and a Court challenge on that procedure in my opinion would be sustained. I further presume Legislative Counsel would point out the problem with this particular provision.

CONCLUSION

To give purpose to the original and common sense intent of the Jury Transfer statute, and to simplify its' operation, cases that transfer for Jury trial, and do not go to Jury trial, in all instances should remand to the Court of Original Jurisdiction, the Municipal Court, to allow the Local Courts to handle Local problems which they were elected to address.

Respectfully submitted:



Thomas A. Davies
Judge of Fargo Municipal Court

It should be noted that this statute applies only to Districts which have a Municipal Court. Some Municipal Courts have been abolished and therefore the District Court is the Court of Original Jurisdiction in those areas. Some Courts, such as the District Court in Ward County, remand the case back to Municipal Court if there is no Jury trial.

	A	B	C	D	E
1	TRANSFER/JURY TRIAL STATISTICS 1999-2000				
2	County	Jury Trials 2000	Jury Trials 1999	Jury Trials 1998	Transferred cases
3	Barnes	None	1		Valley City transf. 34 in 2000 (5 were remanded); 12 in 1999
4	Bottineau	None	None		No transf. from Bottineau or Willow City; ofcrs. cite directly into Dist Ct
5	Burleigh	11	19		The # of jury trials are for Bismarck only (by offense). Bismarck transf. approx. 100 cases in 2000 and 100 in 1999. The city of Lincoln transfers 1 or 2 per year and they have only had 1 jury trial from Lincoln.
6	Cass	9	18		Fargo transf. 607 in 2000; 409 in 1999; W. Fgo transf. 78 in 2000; 36 in 1999
7	Grand Forks	16	9	12	166 in 2000
8	LaMoure	None	None		Receives transfers from LaMoure only
9	Mercer	None	None		1 in 2000 from Beulah
10	Morton	2			Mandan - 38 in 2000; 39 in 1999; The # of transfers decreased (from 171 in 1997 due to change in law requiring written demand b/4 transfer.
11	Pembina	None	1		Cavaler transf. 12 in 2000; 25 in 1999; Walthalla transf. 4 in 2000; 1 in 1999
12	Ramsey	1			Devils Lake transf. 26 in 1999 & 2000
13	Richland	None	None		71 transfers in 1999 & 2000 total
14	Rolette	1	None		Rolette - 1 in 2000 and 1 in 1999; Rolla - 12 in 2000 and 19 in 1999; Dunseith - 13 in 2000 and 16 in 1999
15	Stark	None	1		Dickinson transf. 63 in 2000; 94 in 1999
16	Stutsman	11			Check on year
17	Ward	7	6		Receive transfers from Kenmare, Surrey, Burlington & Minot. Minot transf. 485 in 2000 and 543 in 1999
18	Wells	None			1 transfer
19	Williston	1	1		both city of Williston; # of transfers unknown

The data contained herein is not guaranteed accurate.

Joanne Klen

10508.0200

Fifty-seventh
Legislative Assembly
of North Dakota

SENATE BILL NO. 2339

Introduced by

Senators Flakoll, Lyson, Traynor

Representatives DeKrey, Mahoney

1 A BILL for an Act to amend and reenact section 40-18-15.1 of the North Dakota Century Code,
2 relating to transfers from municipal to district court.

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

4 **SECTION 1. AMENDMENT.** Section 40-18-15.1 of the 1999 Supplement to the North
5 Dakota Century Code is amended and reenacted as follows:

6 **40-18-15.1. Transfer to district court - Expenses of prosecution - Division of**
7 **funds and expenses between city, county, and state.** A matter may be transferred to district
8 court for trial only if within twenty-eight days after arraignment the defendant ~~has requested~~
9 requests, in writing, to transfer the case to district court ~~and to exercise for the sole purpose of~~
10 exercising the defendant's right to a jury trial. If the defendant enters a plea of guilty or a plea
11 agreement is reached before the selection of a jury, if the defendant waives a jury trial, or upon
12 a finding of guilt, the case, upon the request of the city prosecutor, must be remanded to the
13 municipal court from which the transfer took place for conclusion. The city shall provide a
14 prosecuting attorney and, in the case of any indigent defendant, a defense attorney. The city
15 may contract with the county, state, or any individual or entity for prosecution or defense
16 services. In the contract, the city, county, and state may agree to a division of all fees, fines,
17 costs, forfeitures, and any other monetary consideration collected from cases transferred under
18 this section, which must be paid to the city and county treasury and state general fund at least
19 once each quarter. At the time of payment, the clerk of district court shall account under oath to
20 the city auditor, county, and state treasurer for all money collected. In the contract the city,
21 county, and state may also agree to a division of expenses, including jury and witness
22 expenses, related to cases transferred under this section. In the absence of a contract all fees,
23 fines, costs, forfeitures, and any other monetary consideration collected from transferred cases
24 must be deposited in the state general fund.

- CITY OFFICES -

423 Sixth Street
P.O. Box 1048
Lake, ND 58301-1048

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**- CITY COMMISSION -**

Fred Bott, President
Dick Johnson
Tim Heisler
Rick Morse
Craig Stromme

February 2, 2001

Honorable John T. Traynor, Chair
Senate Judiciary Committee
State Capitol Building
600 East Boulevard Ave.
Bismarck, ND 58505

VIA FACSIMILE 701-328-2872 & U.S. MAIL

Re: Senate Bill 2339

Dear Senator Traynor:

I write to advise the Senate Judiciary Committee that I have no objection to the present language of Senate Bill 2339 as it leaves the decision to request a remand to the municipal court to the discretion of the city prosecutor.

I understand that this bill has been introduced to cure a particular problem in the City of Fargo where defense counsel will request a jury trial in order to obtain a more lenient sentence offered by the district court. In my experience, there is no such discrepancy in the sentences offered by district court in the Northeast Judicial District. On the contrary, the sentences for some offenses may be more stringent in the district court than in the municipal court.

I would not favor any amendment to this bill which would remove the discretion granted to the city because I believe requiring a such remand would unnecessarily complicate the administration of justice in such cases. In short, I do not mind a fix for Fargo as long as it does not require a fix where none is needed.

I submit, however, that the present language in Sb 2339 is needlessly complicated and have enclosed a proposed amendment to section 40-18-15.1, N.D.C.C., which I believe accomplishes the same thing with fewer words.

Letter to Hon. John T. Traynor
February 2, 2001
Page 2

I would like to thank the committee for their time and attention.

Respectfully yours



Daniel M. Traynor
Assistant City Attorney
Email: dantraynor@traynor-rutten.com

Enclosure

cc w/ encl.: Hon. Thomas A. Davies

40-18-15.1. Transfer to district court--Expenses of prosecution--Division of funds and expenses between city, county, and state. A matter may be transferred to district court for trial only if within twenty-eight days after arraignment the defendant has requested in writing to transfer the case to district court and to exercise the defendant's right to a jury trial. If the city requests that sentencing occur in the municipal court, the request must be granted, and upon conviction the case must be remanded to the municipal court from which the transfer took place for conclusion. The city shall provide a prosecuting attorney and, in the case of any indigent defendant, a defense attorney. The city may contract with the county, state, or any individual or entity for prosecution or defense services. In the contract, the city, county, and state may agree to a division of all fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred under this section, which must be paid to the city and county treasury and state general fund at least once each quarter. At the time of payment, the clerk of district court shall account under oath to the city auditor, county, and state treasurer for all money collected. In the contract the city, county, and state may also agree to a division of expenses, including jury and witness expenses, related to cases transferred under this section. In the absence of a contract all fees, fines, costs, forfeitures, and any other monetary consideration collected from transferred cases must be deposited in the state general fund.