

House Bill 1032
Senate Judiciary Committee
Testimony Presented by Sara Behrens
February 17, 2025

Good afternoon Chair Larson, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today in support of House Bill 1032.

Last session, the Legislature passed SB 2278 which created a study of the laws and procedures relating to courts established under Chapter 40-18. The Supreme Court and the League of Cities, with input from municipal judges, undertook a rewrite of chapter 40-18 to provide clearer procedures, oversight, and duties. That rewrite is HB 1032. Much of the bill is the same or substantially similar to the current law regarding municipal courts, but it has been updated and reorganized. There are also some additions included that we hope will add some clarity.

This bill is a compromise bill. There are still areas where we disagree such as whether the municipal courts should be courts of record, whether a prosecutor must be present at all proceedings, and whether all judges should be lawyers.

Section 1

Provides explicit authority for the district court to hear ordinance cases for cities of fewer than 5,000 people and those cities that have entered into agreements as provided in chapter 40-18.1.

Section 2

Updates the citations to the corresponding sections of the proposed new chapter.

Rather than saying the expenses for representation of an indigent person in municipal court are paid by the city, it has been changed to for a violation of a municipal ordinance. This clarifies that the city is still responsible in those municipal ordinance cases that are heard in district court.

References to sections 40-18.1-23 and 40-18.1-24 are added to the list of situations where a case may be transferred to the district court.

Section 3

This section creates the new chapter 40-18.1. The current chapter 40-18 is titled Municipal Judges. The new chapter is titled Municipal Courts as it governs more than just the judges.

40-18.1-01 – Establishment of a municipal court.

Subsection 1 - Currently, § 40-05-01 states that a city can establish a municipal court by resolution, but this will also include it in the chapter specifically about municipal courts.

Subsection 2 – Requires that the city pass an ordinance providing for election of municipal judges.

Subsection 3 – Requires a city to provide the necessary space and resources for the municipal court to operate.

Subsection 4 – Requires the court schedule to be publicly posted and defines what that means. Hopefully more cities will create websites so it will be easier for the public to know when court is being held. This will at least create a central location (auditor) so the public will know where to go for the information.

Subsection 5 – Allows two or more cities to create a joint municipal court and share the cost.

Subsection 6 – Allows two or more cities to have separate municipal courts, but share resources such as the courtroom and staff.

Subsection 7 – Provides a mechanism for termination of the agreements provided for in subsections 5 and 6.

Subsection 8 – As is the case now, municipal courts are not courts of record.

40-18.1-02. Jurisdiction.

Compiles the jurisdictional limitations into one section.

Subsection 1 – Provides the general statement of jurisdiction for municipal courts and joint municipal courts.

Subsection 2 – This section compiles the various provisions listing the types of cases the municipal court has no jurisdiction to hear into one place.

- a. This is currently § 40-18-01(3). The only change is instead of the municipal court directing that the charge be filed in district court it be referred to the state's attorney. The court can't tell the state's attorney how to charge out their cases.
- b. This is currently § 40-18-01(4).
- c. Provides that municipal courts have no jurisdiction over domestic violence offenses. Section 12.1-17-01.2(4) requires that the prosecution of domestic violence offenses be in district court.
- d. Provides that municipal courts have no jurisdiction over juvenile proceedings except non-criminal offenses. Jurisdiction is otherwise exclusive to juvenile court (§27-20.2-03).

40-18.1-03. Fitness to Proceed.

This is a new section not in current statute. Fitness to proceed is not an easy concept and municipal courts do not encounter the issue as often as district courts do, particularly municipal courts in small cities. Rather than have fitness to proceed handled in municipal court, this section provides that the case must either be transferred to district court for the examination or dismissed if the prosecutor moves for dismissal. The district courts have a mechanism in place so that the order for examination is automatically sent to the State Hospital via a report. If the

defendant is determined fit to proceed, the case is remanded to the municipal court and if the defendant is found not fit to proceed, the case is dismissed. The city prosecutor and appointed defense attorney remain the attorneys for the case when it is transferred.

The time to petition to transfer the case to district court for a jury trial is suspended pending the determination of the defendant's fitness otherwise the time would expire while the defendant may be unfit to even make such an election.

40-18.1-04. Criminal Responsibility.

This is also a new section not in current statute. Even district courts do not see lack of criminal responsibility cases often. Like with fitness to proceed, the case can be transferred to the district court for the examination process. Like with fitness to proceed, the district court has a report mechanism to send order for examinations to the State Hospital. If, following the examination, the defendant asserts the defense of lack of criminal responsibility, the case remains in district court, otherwise, it will be remanded back to municipal court. Again, the city prosecutor and appointed defense attorney remain the attorneys for the case when it is transferred.

40-18.1-05. Election of municipal judge – Qualifications.

Subsection 1 – Provides for four-year elected terms which reflects what is in § 40-15-02. During this time, the judge cannot hold another city office. Also requires the city auditor to notify the state court administrator of changes in judgeships.

Subsection 2 – Many municipal courts are in small cities and do not have a sufficient number of cases to make it economically feasible to have a full-time municipal judge. This section makes clear that a municipal judge can be a part-time municipal judge and may be a municipal judge for multiple cities.

Subsection 3 - As in current § 40-18-01, the judge in a city with a population of 5,000 or more, must be licensed to practice law. The judge must also be a resident of the city unless the city provides that the judge does not have to be a resident.

Subsection 4 – As in current § 40-18-01, in a city of 5,000 or fewer residents, the municipal judge does not have to be licensed to practice law (though they can be) and the judge does not have to be a resident of the city.

Subsection 5 – This subsection comes from § 40-18-06. The compensation must be set by the city and can't be changed based on prohibited factors.

40-18.1-06. Demand for change of judge.

This section partially comes from § 40-18-20, but provides for the replacement judge within the next section.

40-18.1-07. Vacancy in office of municipal judge – Disqualification – Temporary absence of municipal judge.

Provides a more comprehensive procedure for filling a judicial vacancy than current statute.

Subsection 1 – This is taken from § 40-18-03.

Subsection 2 – This is taken from § 40-18-03.

Subsection 3 – Provides for a procedure to be followed when the alternate judge is also unable to serve. The chief just can appoint a district court judge to preside over the case.

40-18.1-08. Clerk of municipal court.

Subsection 1 – This is taken from § 40-18-06.1.

Subsection 2 – Provides a more detailed list of the duties of the municipal clerk than is currently set forth in statute.

40-18.1-09. City prosecutor.

Requires the city provide a prosecutor licensed in the state to be present for all contested hearings and proceedings involving a class B misdemeanor and requires the compensation and expenses of the prosecutor to be paid by the city. Current law has no requirement that a prosecutor be present and a prosecutor is not always present in every city. The city could contract with a prosecutor rather than having a full-time prosecutor.

40-18.1-10. Change of venue – Reliable electronic means.

This section is currently § 40-18-21.1. No changes have been made.

40-18.1-11. Costs and fees.

Makes clear that only the costs and fees specifically provided for in the chapter may be assessed and must be itemized in the judgment.

40-18.1-12. Action for violation of ordinance in corporate name – Previous prosecution, recovery, or acquittal no defense.

This is currently found in § 40-11-10 but is more appropriate in this chapter.

40-18.1-13. Summons to issue on violation of ordinance – When warrant of arrest to issue.

This is currently found in § 40-11-11 but is more appropriate in this chapter. It has been reworded to be clearer. The case can be started by either a uniform complaint or a formal complaint under the North Dakota Rules of Criminal Procedure. An arrest warrant must be issued unless the judge believes the defendant will appear with just a summons.

40-18.1-14. Commitment for nonpayment of fines or costs.

This is currently found in § 40-11-12 but is more appropriate in this chapter. It provides when someone can be jailed for nonpayment of fines or costs.

40-18.1-15. Fines, fees, and forfeitures for violation of ordinances paid into city general fund.

Requires fines, fees and forfeitures collected on a case that was transferred from municipal court to district court to be deposited into the city's general fund. This is currently found in § 40-11-13 but is more appropriate in this chapter.

40-18.1-16. Diagnosis and treatment of individuals convicted of driving while under the influence.

This section is similar to current § 40-18-12, however, the option to require the defendant to “work for the city at such labor as the defendant's strength and health

permit” was removed as this is an antiquated penalty. Section 39-08-01 already provides “[a] person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection...” Therefore, we simply refer back to section 39-08-01 for sentencing requirements.

40-18.1-17. Sentencing alternatives – Suspension of sentence or imposition of sentence.

This section is the same as current § 40-18-13 with the only change being “person” changed to “individual.”

40-18.1-18. Transfer to district court – Expenses for prosecution – Division of funds and expenses among city, county, and state.

Nearly identical to current § 40-18-15.1 but separated out into subsections for readability. the defendant must file a written request to transfer the case so that there is a document asking for the transfer and the judge can enter an order. This allows the judge to determine whether the request was timely. If the request is filed within the 28 days the request must be granted. However, it must be filed and acted upon by the judge so that the clerk is not put in the position to determine if the request was timely.

The section was also changed to make it clear that if the district court retains jurisdiction it is for both sentencing and enforcement.

40-18.1-19. Appeals from determination of municipal judge.

Parts of the section are taken from current § 40-18-19, however, the current statute fails to provide a procedure once the case is appealed. It has been unclear whether the case is remanded back to the municipal court or if it remains with the district court. This section provides that like transfers to district court, the case remains with the district court for sentencing and judgment unless the parties agree to a remand.

40-18.1-20. Municipal judge may enforce orders and judgments and punish for contempt.

This section is nearly identical to current § 40-18-14 and allows municipal judges to punish contempt.

40-18.1-21. Judgment for fines, fees, or costs – Procedure.

This section combines current §§ 40-18-14.1 through 40-18-14.5 and governs docketing of a civil judgment for unpaid fines, fees, and costs. The city must enforce the judgment.

40-18.1-22. Transfer of municipal ordinance cases to district court.

This section partially follows current § 40-18-06.2 but separates it from the abolishment of the municipal court. This governs when a city wants to keep its municipal court but transfer some or all of its cases to district court. The city will still be responsible for providing the prosecutor and the appointed defense attorneys.

40-18.1-23. Abolition of municipal court in a city with a population of less than 5,000.

Currently, to abolish a municipal court requires an agreement among the governing body of the city, the governing body of the county, the presiding judge of the district and the state court administrator. This has prevented some small cities from abolishing their courts despite not having the resources to effectively continue operating. This section will allow a municipal court to be abolished by resolution. The resolution must be provided to the presiding judge and clerk of the district court, the state's attorney, and the state court administrator and must provide a transfer effective date at least 90 days following the resolution date. Procedure is provided for what happens to pending cases. The municipal judge's authority terminates the last day of the month in which all cases are transferred or at the end of the judge's term, whichever occurs first.

40-18.1-24. Abolition of municipal court in a city with population of 5,000 or more.

Currently, these larger cities have no statutory authority to abolish their municipal courts regardless of circumstances. This section will allow abolishment of the court in a larger city, but such abolishment can only be done with the agreement of the county, the presiding judge, and the state court administrator's office. This differs from the procedure for the smaller cities due to the volume of cases potentially becoming district court cases. The cases will transfer no fewer than 180 days following the agreement unless the parties to the agreement agree to a shorter timeframe. The handling of pending cases is the same as for the small cities.

40-18-25. Compliance with rules promulgated by the North Dakota supreme court.

Subsection 1 - Requires Supreme Court rules to be implemented for specific areas.

Subsection 2 – Requires municipal judges to comply with the rules and requires the city to reimburse a judge for expenses with maintaining qualifications and education.

Subsection 3 – Provides a consequence for failure to comply with the rules. Currently, there are few remedies for the failure of a municipal judge to comply with the rules established by the court. Those judges licensed to practice law can be reported, but there is little that can be done about non-licensed judges. The Judicial Conduct Commission has oversight of municipal judges just as it does over district court judges and this provides a remedy that can be imposed by the Judicial Conduct Commission.

Section 4

Repeals those sections moved from chapter 40-11 and chapter 40-18.

Although this bill does not give us everything we would like, it will go a long way towards providing improved oversight of municipal courts through court rules pertaining to reporting, procedure, qualifications, facilities and educational requirements. Procedures and requirements will be clearer which will be helpful to citizens and judges alike. Thank you for your consideration and we urge a do pass.