

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2286

2007 SENATE JUDICIARY

SB 2286

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2286**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 23, 2007

Recorder Job Number: 1673

Committee Clerk Signature *Maria L Solbey*

Minutes: Relating to prosecutions in municipal court for violations of city ordinances in home rule cities.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Sen. Tim Flakoll, Dist. #44 (meter 0:05) Introduced the bill. This bill allows cities to enact this legislation if they think it beneficial to them and to the enter. The amount of cases to receiver a jury trial is 7 out of 500. Provide all fair levels of constitutionality taking the pressure off of district courts.

Eric Johnson, City Attorney-Fargo (meter 2:12) Gave Testimony Att. #1 Reviewed current process. Last time reviewed was in 1986. Prior to 1986 they went in front of a judge. What has seemed efficient is no longer efficient.

Greg Sund, City Administrator, Dickinson (meter 9:16) Amendment in references to Fines.

Sen. Fiebiger stated that there is a recently processed bill in process that is already covering this.

Thomas Davies, Municipal Judge in Fargo – Submitted additional testimony – Att. #2

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

None

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2286**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 24, 2007

Recorder Job Number: 1844

Committee Clerk Signature

Mona Solbey

Minutes: Relating to prosecutions in municipal court for violations of city ordinances in home rule cities.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Sen. Nething reviewed the bill for the committee. The committee discussed the bill having come from Fargo and a Judge their being to strict. They had concerns of the constitutionality of this bill but why did not anyone come in to attest this?

Sen. Fiebiger will contact some people and address the above issues.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2286**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 6, 2007

Recorder Job Number: 2936

Committee Clerk Signature *Mona Salby*

Minutes: Relating to prosecutions in municipal court for violations of city ordinances in home rule cities.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Sen. Fibiger reviewed the bill for the committee. Spoke of the cases that were removed out of municipal courts and an ordinance could be tried by a municipal judge without a jury and he reviewed the entire process. Spoke to the defense attorney's on what there problems were and they stated that they did not like the ability to get a jury trial right away. Under current law you can't anyway so this would not change what is currently happening. He detailed there conversation. I do not think that there is a constitutional issue with this bill as it is.

Sen. Fiebiger made the motion to Do Pass and **Sen. Marcellais** seconded the motion.

Sen. Nething made the statement that it sounds like we are doing another thing for the home rule city that they feel is important according to the legislature

All members were in favor and the motion passes.

Carrier: Sen. Fiebiger.

Senator David Nething, Chairman closed the hearing.

Date: 2-6-07

Roll Call Vote # 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2286

Senate _____ Judiciary _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Flebiger Seconded By Sen. Marcellais

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Flebiger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson	✓	

Total Yes 6 No 0

Absent 0

Floor Assignment Sen. Flebiger

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

REPORT OF STANDING COMMITTEE (410)
February 6, 2007 12:43 p.m.

Module No: SR-25-2254
Carrier: Fiebiger
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2286: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2286 was placed on the
Eleventh order on the calendar.

2007 HOUSE JUDICIARY

SB 2286

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2286

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/7/07

Recorder Job Number: 4517

Committee Clerk Signature

Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2286.

Erik Johnson, Fargo City Attorney: (see attached testimony).

Rep. Koppelman: If we were to pass this, if that would raise some of the same concerns about equal protection, and if people were to be treated differently in terms of their right to a jury trial in those areas versus other parts of the state. Do you see that as a problem.

Erik Johnson: I don't think there is any equal protection problem at all. Every defendant will have a right to a jury trial and of course, that's guaranteed by our constitution and by our state constitution. Actually, the right to a jury trial doesn't necessarily attach to every single criminal offense, it has to be a significant offense and a Class B misdemeanors don't necessarily fall under that in the federal constitution. But there's no question in ND, the Class B misdemeanor is entitled to a jury trial and nothing is violated there. This type of procedure has been in existence, at least I know in MA and KY. There was a US Supreme Court decision that addressed the very issue of whether or not there were any problems with jury trial rights in MA, interpreting an almost identical procedure and the US Supreme Court said no problems with it.

Rep. Koppelman: So essentially what you're really saying here is that before it gets to the district court docket it should have the municipal court looking at, it shouldn't have an automatic removal from the municipal court that is happening now.

Erik Johnson: That's correct. It isn't so much that the municipal court should review the charge for sufficiency, I think frankly the approach I'm suggesting is that while it seems efficient that if you want to get a jury trial you might as well just go to the court where you are going to hold it; I think human nature is that you are not going to decide whether you want to hold and decide to plead guilty or whether the prosecutor is going to hold and drop the case down to a lesser offense. Those things don't happen until you're at the courthouse steps, so to speak. So the decision making time is always the day before the jury trial or the day of the jury trial in many cases, and I think that is the explanation plain and simple why there are over 600 transfers and only 4 trials in 2006. I think this bill might help with that. I think it will help the defendant to go some justice perhaps less expensively and with a fair tribunal and still have the right to a jury trial.

Rep. Griffin: Can you give me the name of the Supreme Court case.

Erik Johnson: Ludwig vs. Massachusetts. I can certainly e-mail you that case.

Rep. Griffin: Why does the city of Fargo want to have to prosecute an extra 586 people.

Erik Johnson: As I said, I was prosecuting pre-1987, and my boss, who was then the city attorney, Wayne Solberg was headed out here to testify in favor of it, asking that same question. It seemed inefficient and at first glance, it does. But my experience in 1986, there were 20 cases that got tried in municipal court and appealed to county court and we actually tried 6 cases. I would suggest that those 6 cases mostly were from a different attorney in town and I was the new prosecutor in town, and everyone wanted to try a case to try and test me. The following year, prior to the 1987 legislation taking effect, I think I did one trial for 1987 in

district court. In a way it seemed inefficient to try cases twice, but when you're dealing with volume, there may end up being some efficiency. We currently have a prosecutor, our chief prosecutor, who we thought was going to perhaps offer some testimony, but he had to be in district court and he couldn't make it. He spends a very significant amount of time in district court right now, it's almost a full time job having a part of initial prosecutor handling the district court aspect of court. We also have prosecutors for municipal court. It's a different ball game now than it was 20 years ago. I can guarantee that it's going to be different but I think it is an interesting alternative. I think it is worth a try.

Rep. Wolf: You mentioned that having two trials, it allows the defendant the opportunity to hear the officer's testimony. Can't they hear that in the deposition.

Erik Johnson: They certainly can. I haven't prosecuted now for quite a few years, about 10 years or so, but nobody ever had a deposition taken during the entire time I was there. I think the issue is that a Class B misdemeanor, for the most serious offenses they come into the municipal court and are charged out by city prosecutors. There is an expense factor and it isn't the practice.

Rep. Wolf: You also mentioned that it might be a benefit to the defendant to do it, but wouldn't it actually be a detriment to have to pay attorney fees for both trials, instead of for one.

Erik Johnson: Again, that seems to make sense, but I would suggest that a defendant, in my experience, might appear on his or her own, plead not guilty, the matter is scheduled for trial and their defense attorney would literally show up for the trial on Wednesday afternoon at 2:00 pm and be out of there by 2:40. If it turns out the way I expect it to turnout, there are a number of people who will have a trial, and be found not guilty or be found guilty and be satisfied with that, and pay their lawyer frankly very little money compared to the whole process of appearing

multiple times in district court. The end result, in my opinion, will be less expensive for the defense attorneys as a whole.

Rep. Wolf: In district court, you still have rule 43, correct.

Erik Johnson: Yes.

Rep. Wolf: You can appear by paper.

Erik Johnson: Yes, you can appear by paper in that way, but it is my understanding that in district court, not every defendant takes on the probable cause hearings and there are dispositional hearings.

Rep. Wolf: You said there were 584 cases but only 4 were tried. Can you provide us with the number of criminal cases that were filed in Cass County. I know that there are a lot of cases filed that don't go forward.

Erik Johnson: In state or municipal. I can information to you.

Rep. Boehning: Out of the 584 cases, how many were DUI's that were from municipal to district court.

Erik Johnson: Are you asking of the 584 were DUI's, or are you asking how many DUI's were charged.

Rep. Boehning: Of the 584 cases, how many ended up in district court.

Erik Johnson: I don't have the answer.

Rep. Boehning: In the e-mail here it talks about the revenue issue. Is that about the fines and how are they going to be able to handle that, if there is only one judge for that.

Erik Johnson: In terms of the number of judges, there is one municipal court judge and for the chief judge he has two or three deputy judges. Municipal court has expanded substantially over the last few years. So that's how it would be managed. It certainly would put some additional pressure on municipal court and I fully expect that there would be more trials in

municipal court. Again, I think the offset is those trials are generally handled fairly efficiently and I think it can be accommodated. Judge Davies was accepting of this idea. In terms of the revenue standpoint, I'm not sure, when you take the amount of expense that the city has in providing prosecution services in district court, nearly full time, and still there would be a need to be in district court from time to time, I think there is some savings there. I look at this more as an expense savings aspect, clearly for the city and I also think that it will be for the defendants also.

Rep. Boehning: In the bill, it says that it may be tried in municipal court and still have the option of going to district court on line 16.

Erik Johnson: I think the style of the sentence is intended to say that a home rule city may create an ordinance which allows a trial would have to be held in municipal court first. That's the reason for the permissive language.

Rep. Boehning: I guess when I'm reading this, you have to go to municipal court first. If the home rule city would update its charter if they got that municipal trial hearing and appeal it to the district court.

Erik Johnson: I think, again, the concept in my mind in proposing this to you was that all cases would come to municipal court. Frankly, back in those days there were often times when defense attorneys and their clients didn't just want to have the case tried in district court, not very often, but once in a while, they said that they wanted to go to a jury trial and they would basically not protest our presentation through the lawyer of what the facts were to the case and the judge would enter a conviction based on, not on stipulated facts, uncontested facts, with the understanding that those facts would be contested at jury trial. That was one way of handling that efficiently for those very few defendants that wanted to handle it that way. Conceptually, the idea is that everybody should go to municipal court.

Rep. Klemin: Why is this procedure only going to be available to home rule cities.

Erik Johnson: As far as I'm concerned, it doesn't have to be limited to home rule cities. It just seemed like an appropriate suggestion. There wasn't a particular reason behind it. Given that the philosophical basis behind home rule cities, is that they are given more latitude. There isn't any reason not to allow any city to change to doing it this way.

Rep. Klemin: The same procedure would apply in a municipal court in a non-home ruled city, as in a home-rule city, wouldn't it.

Erik Johnson: Yes, it certainly could. Prior to 1987, the procedure that I am contemplating did apply in every municipal court around the state.

Rep. Klemin: The language starting on lines 19-22, we're talking about the procedure now in the district court, correct.

Erik Johnson: Yes.

Rep. Klemin: So in line 20, it says that defendant has the right to trial by the court, but not by the jury. The court that we're talking about here is the district court and not the municipal court, is that correct.

Erik Johnson: Yes, for an infraction, an infraction is an offense punishable by a fine up to \$500 and no jail. Under our current law, one is not entitled to a jury trial for an infraction.

Rep. Klemin: So we get to the part that talks about you are entitled to an appeal as provided in 40-18-19, and basically what you're saying in the next four lines is essentially what it says in 40-18-19, I'm wondering if that language is really necessary there.

Erik Johnson: That was the language proposed by the district court judges to clarify. They wanted it to be made clear that on appeal, infractions, no jury trial but class B misdemeanors, yes a jury trial. Yes, it may be somewhat a duplication but that was the suggestion of the Cass county Judicial Court judges and it seemed appropriate.

Rep. Klemin: But in any event, if we do keep this language in here, it may be appropriate to say district court on line 20, so that we're not confusing this with the fact that all through this section we're just talking about the municipal court to start with.

Erik Johnson: I think that there could be a clarification that both of those sentences are referring to district court. I don't think it does anything inadvertently to change anything from what I can think of.

Rep. Delmore: Can you think of another infraction/misdemeanor that would be used beside the DUI.

Erik Johnson: What are our other class B misdemeanors that we are dealing with.

Rep. Delmore: I'm talking about if I plead to an infraction in municipal court, I lose my rights when I go to district court. Can you think of another thing besides DUI that can be tried that way.

Erik Johnson: An infraction, whether under state or city law, does not carry the right to a jury trial. Under the current law, once the case is tried in municipal court it is done.

Rep. Delmore: If I were to be found guilty of it in municipal court and somehow that's overruled, then I would have district court to go to, whereas if I decide that I want that right to appeal, I only have one way to go, for the DUI and I can't think of another crime that we would be punishing here.

Erik Johnson: Besides DUI, there are a number of Class B misdemeanors: shoplifting, theft, assault...

Rep. Delmore: They can be either a misdemeanor or an infraction.

Erik Johnson: There are no offenses that both an infraction and a class B misdemeanor.

Rep. Delmore: That's right, but I'm getting at is the DUI is the only one.

Erik Johnson: I'm not quite following you; I used DUI as an example. This would apply to all class B misdemeanors. All class B misdemeanors have a right to a jury trial, \$1,000 fine and 30 days in jail, whether you are charged in the state or under city ordinance. The current procedure simply says that on class B misdemeanors you first appear in municipal court and if you want a jury trial you have to say so within 28 days and then you get bumped to district court. This procedure would allow an alternate procedure that provides for the trial first in municipal court and then appealed to a jury trial in district court.

Rep. Kretschmar: In Judge Davies' email it says a possible reason is judge or sentence shopping. Do you think that's why so many in Fargo go to the next level, for a different judge or sentence?

Erik Johnson: That's an interesting question. It is possible that certain defense attorneys may feel that they just want their case in Cass County district court because they don't like Judge Davies, or think he's tough. If you talk to the district court judges, they say that they give basically the same sentence as they do in municipal court, but they don't understand. There is something subjective there that may be the case. My opinion is that it has just become the culture, and apparently that culture doesn't necessarily exist elsewhere besides Cass County, but there seems to be a culture that the level of standard of cares that if you're a defense attorney, if you were to not transfer it to district court, why would you not do that. That's the standard. I think it's just become that way.

Rep. Kretschmar: Could it be almost like malpractice.

Erik Johnson: I sure would think somebody would have a hard time proving malpractice. In talking about real estate law, there is a similar situation, when you are reviewing an abstract, you're wondering who the toughest lawyer is in town, who will review this after you and what will they say. Will they pass on this little problem or not and so as the new lawyer comes into

town and is tough on issues and picks every nit there is, the bar is raised and the rest of us that are practicing perhaps at a perfectly ordinary standard might take some umbrage to that. I can sense that there may be some of that here. It's just become a practice and it becomes almost the bar, the standard. I think that is what is going on. I don't think it is going to impact anybody's right to be tried. If it doesn't work, then it won't work. I think we won't know until we try.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition or neutral. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2286

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/7/07

Recorder Job Number: 4583

Committee Clerk Signature *D Penrose*

Minutes:

Chairman DeKrey: We will take a look at SB 2286. What are the committee's wishes.

Rep. Boehning: I move a Do Not Pass.

Rep. Griffin: Second.

13 YES 1 NO 0 ABSENT

DO NOT PASS

CARRIER: Rep. Griffin

Date: 3/7/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2286

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Boehning Seconded By Rep. Guffin

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman		✓			
Rep. Kretschmar	✓				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Guffin

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

REPORT OF STANDING COMMITTEE (410)
March 7, 2007 3:41 p.m.

Module No: HR-43-4672
Carrier: Griffin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2286: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2286 was placed on the
Fourteenth order on the calendar.

2007 TESTIMONY

SB 2286

AA #1
1-23-07

SENATE JUDICIARY COMMITTEE

RE: SB 2286 – Relating to Prosecutions in Municipal Court in Home Rule Cities

ERIK R. JOHNSON
CITY ATTORNEY—CITY OF FARGO
January 23, 2007

Members of the Judiciary Committee, my name is Erik Johnson. I am the City Attorney for Fargo. I appear before you to testify in favor of Senate Bill 2286. I appreciate the efforts of the Senators, some of whom are members of this committee, who agreed to introduce this bill for the City of Fargo and for me.

In 2006 there were 585 cases that were transferred from Fargo Municipal Court to Cass County District Court. Of these 585 cases, only about four cases actually went to trial. The experience in 2005 and the prior 18 years have been somewhat similar, according to information from the courts.

Current Law. Under the current law, if someone is charged with a violation of municipal ordinance, that person – that defendant – is given the option of having their trial in municipal court, before a municipal judge or they can ask that the case be transferred to district court for a trial before a district court judge. If the defendant chooses the latter, the case is then “transferred” to district court and all further appearances are handled at the county courthouse before the district court judges. Under the current procedure, once a case is transferred to district court it stays in district court -- all trials, whether a bench trial or jury trial, are held at district court. This has been the procedure, in one form or another, since 1987 – when the so-called “municipal court transfer” law was enacted. The municipal court transfer law was enacted with the purpose of bringing more efficiency to the judicial process; however, it has been the experience in the City of Fargo and County of Cass that the opposite has resulted, as evidenced by our experience this past year in particular.

Proposed Law. If approved, Senate Bill 2286 would authorize home rule to enact an ordinance to modify the procedure for municipal court cases. The modified procedure would provide that all municipal ordinance violations would be tried in municipal court—before a municipal court judge. If the defendant is convicted, then he/she would have a right to appeal the case to district court. If the offense is one to which the defendant is entitled to a jury trial, the defendant has his/her jury trial in district court. The modified procedure is a tried and true procedure – it had been in effect for many years prior to 1987 – when the “municipal court transfer law” was enacted (amending N.D.C.C. §40-18-15 and creating N.D.C.C. §40-18-15.1). I prosecuted for the city of Fargo prior to 1987. I have experience under both procedures. Prior to the 1987 “transfer” law we tried a greater number of Class B misdemeanors in municipal court; but the trials were quite efficiently handled, as most bench trials are. A DUI trial might take less than an hour in municipal court (as opposed to a full day for a jury trial). Prior to

1987, it was frequently my experience that defendants who were convicted in municipal court felt that they had "had their day in court" and were satisfied with the finding of the judge that they were guilty and, thus, they chose not to appeal the conviction to district court. A few defendants who were found guilty in municipal court appealed to county court, where a jury trial was held. Thus, the defendants had two separate opportunities for an acquittal and they had their rightful jury trial.

Proposed Bill Deals with Human Nature—Allows Efficient Access to Courts by Defendants. The reason the so-called transfer law was proposed was for efficiency purposes. It was argued that the procedure then in effect required cities to successfully prosecute a defendant twice—in municipal court and, again, in district court (then "county" court). While that argument was logical, it did not account for human nature. As with many things, people—humans—react to deadlines. For a criminal defendant charged with a Class B Misdemeanor and his/her lawyer, that deadline is "the jury trial". Under the current law, a defendant has 28 days to decide whether or not he/she wants a jury trial. It is the experience in Fargo that unless the defendant intends to plead guilty immediately, the defendant will ask for a jury trial and demand that the case be transferred to district court for appearance before a district court judge, arraignment, scheduling conference, and jury trial. There is nothing inherently wrong with this event, except that out of nearly 600 cases transferred, only 4, or so, cases actually went to trial. Thus, last year about 99% of the cases that were transferred to district court were not actually tried before a jury—they were settled before they were tried. When the case finally got to the steps of the courthouse for trial—the great majority of cases were settled. It is my experience that the same types of settlement could be obtained if the cases are all scheduled for trial in municipal court. When a case is transferred to district court, it is required that paperwork be prepared by the municipal court clerk and sent to district court. A file is opened in district court on each matter transferred. The defendant, who has already appeared at least once in municipal court, must appear again in district court and be arraigned. Typically, the defendant's lawyer has also appeared in municipal court and now, again, in district court for arraignment. A city prosecutor will also have to appear in district court at every step of the process. In recent years, the amount of activity by Fargo prosecutors in Cass County District Court is such that one prosecutor spends almost a full 40 hours each week handling cases for district court alone. That prosecutor almost never appears in municipal court – all of his courtroom time is spent in district court. If this bill is enacted, home rule cities such as Fargo will be authorized to try a different procedure—the former procedure. If it works, then justice will be better served because defendants will have better, more efficient, access to the courts.

Therefore, I respectfully encourage this committee to recommend passage of Senate Bill 2286. Thank you for your time and your attention. I'm pleased to respond to any questions you might have.

Erik R. Johnson
City Attorney -- Fargo

AH #2

Erik Johnson

From: Thomas Davies [tom@tadavieslaw.com]
Sent: Monday, January 22, 2007 3:14 PM
To: ejohnson@lawfargo.com
Subject: HB 2286---Amendment to 40-18-15

I apologize for sending my support by email instead of letter form. I have just received results of some medical issues which had been causing me some concern and while the results were good--meaning I wasted some time emotionally, I didn't get the letter written. I hope this communication will suffice.

I fully support this bill.

I just completed a phone call with my Deputy Clerk of Court who had just spoken to the Court Administrator for Cass County. Cass County indicates that of the approximately 600 transfer cases last year, 4-8 were tried to a jury---the rest were not. The automatic transfer for jury trial in this County simply amounts to (a) convenience for attorneys who spend their primary time in District Court ; (2) Judge or sentence shopping; and (3) the only legitimate use of the transfer statute (jury trial) 4-8 cases.

This is costly to the city of Fargo in terms of revenue; prosecutorial time; witness time--but also is a paper work nightmare for the District Courts who have enough on their plates without the transfers.

All rights are preserved in the procedure as you have presented it in your amendment and the net result should be (after initial passage) that those who wish a jury trial will have the, those who transfer for convenience will stop the practice.

Your proposal simply makes good sense and I urge the legislators to support it.

Thomas A. Davies
Municipal Judge
PO Box 950
Fargo ND 58107
(701) 237-9921
e-mail: tom@tadavieslaw.com

SENATE BILL 2286

TESTIMONY

TO HOUSE JUDICIARY COMMITTEE

My name is Erik Johnson. I am the Fargo City Attorney. I am here to speak in favor of Senate Bill 2286.

I think the best way to explain the bill and its intended effect is to tell you about how municipal court prosecution occurred prior to 1987, when the procedure then in effect was modified by the legislature. I am familiar with the procedure from that time because I was a city prosecutor for Fargo beginning in 1985.

Prior to the 1987 bill, if a man were charged in a city with a DUI he would appear in municipal court. If he pleaded not guilty, he would be scheduled for a trial before the municipal court judge. After the bench trial, if he were found not guilty, that would be the end of the case. The prosecution had no right to appeal a not guilty finding. If he were convicted, he would have a right to appeal to county court (since then county court has "merged" into district court). In county court, he would have a jury trial. A trial de novo. There was nothing wrong with this procedure - it held up in court on appeals to the North Dakota Supreme Court; but there were some who felt that this procedure could be made more efficient. Some felt that the requirement of successfully prosecuting a defendant twice—once in municipal court and a second time in county court—was extra effort and, perhaps, gave the defendant an unnecessary advantage.

As a result, in 1987, a bill was enacted that changed the procedure. It became known as the "Municipal Court Transfer Law" which, in a slightly varied form, is the current procedure. In essence the law provides that if a defendant wants a jury trial, he/she requests a jury trial and the case is then transferred to district court. Of course the idea is that if a defendant wants a jury trial, he can move his case straight to district court. One trial—conviction or acquittal. It's a simple as that...or is it? While the concept seems logical and efficient, it has not been so logical or efficient in practice, at least in Cass County, North Dakota.

This past year in Fargo, there were 585 cases transferred from Municipal Court to District Court. Of that number, only four (4).....four of those cases were actually tried. This experience caused the Cass County District Court Administrator to call and ask what might be done to solve this problem. The defendant appears in municipal court, enters a plea of not guilty, and asks to have the case transferred to district court. The defendant's file is physically copied and transferred to the district court clerk's office. The defendant then appears in district court, enters a not guilty plea before the district court judge. His case then is handled as all misdemeanor cases are handled in district court. It may be that a defendant will have appeared in court either himself or through his attorney as many as four or five times before the case goes to trial. This is not efficient for the defendant. With the prosecutor appearing every time the defendant

Erik Johnson

appears, this is not efficient for the prosecution either. I don't think anyone would question the existing procedure if half the cases went to trial. Nobody would probably question things if a fourth of those cases were tried, but 1% of the transferred cases?

I believe that what the current "transfer law" fails to account for is human nature. In my experience as a prosecutor under the old law, a defendant had a bench trial in municipal court. Often times—perhaps more often than not, even if the defendant were found guilty in municipal court, he felt he had his day in court. He had a chance to hear the police officer's testimony. His own memory of the events surrounding the arrest may have been somewhat hazy. I recall many times when a lawyer would turn to his or her client after a municipal court conviction and ask the client whether he/she wanted to appeal and the client would decline. If they want to appeal the conviction to district court, little has been lost. The defendant has had a chance to conduct some "free discovery" by the opportunity to cross examine the arresting officers. The trial probably took less than an hour in municipal court, so the expense of defense attorneys is minimized.

In 1986, twenty (20) cases were appealed from municipal court to district court and of that number, six (6) were tried to a jury.

IMPACT OF THE BILL. This bill does not mandate any change to the procedure. It simply allows home rule cities the authority to use this procedure set forth in the bill.

- This alternative procedure has been tried and tested - it existed in our system for many, many years.
- All rights are honored, including the right to trial by jury. In fact, defendants would have two opportunities to be found not guilty.

This bill would allow home rule cities authority to pass an ordinance re-establishing the process I just described.

- I ran this bill past all the District Court judges in Cass County. They suggested some minor changes with have been incorporated into this bill.
- I have run this bill past the Executive Committee members of the ND City Attorney's Association and they have approved the bill.
- Judge Davies, the Fargo municipal court judge has offered testimony in support of the bill.

We ask for a do-pass recommendation on Senate Bill 2286.

DATED the 7th day of March, 2007.

Respectfully submitted,

Erik R. Johnson
Fargo City Attorney