2011 HOUSE JUDICIARY

HCR 3036

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HCR 3036
February 14, 2011
14503

☐ Conference Committee

Committee Clerk Signature N Penrose

Minutes:

Chairman DeKrey: We will open the hearing on HCR 3036.

Rep. Larry Klemin: Sponsor, support. Explained the bill. HCR 3036 is simply a study of jury trials for misdemeanors in ND. Under the ND Constitution, there is a right to trial by jury for any offense in which you could be jailed for more than a year. Basically that's all your felonies, class A misdemeanor could be one year, and a class B misdemeanor could be 30 days. This study would look at the misdemeanors, how many jury trials we are having in the state, and how many of those are for class A and how many are for class B misdemeanors. Right now, they don't keep statistics that way; they just keep misdemeanors as a group, so we don't know how many of those cases are actually going to be for class B misdemeanors. We do know that there were 118 misdemeanor jury trials in the last two years each year. They cost $35,000 just for getting the jurors there. The purpose of the study, as I said, would be to look at the misdemeanors, see how many we're actually having trials on, how many are class A, how many are class B, should we continue to do that. It's not required by the Constitution, we only have that in state law that a person is entitled to a trial by jury for A and B misdemeanors. That person would still have a right to a bench trial. The other point of this is with the class B misdemeanors since it's a 30 day maximum jail time, how many people are really going to jail for 30 days and if not, what lesser period of time, if we can find that out. If it isn't much, maybe we shouldn't even have jail time at all for a class B misdemeanor. I would encourage the committee to recommend a Do Pass on this resolution. Let's study the issue and see if it is something that we still need to continue doing.

Rep. Hogan: How do other states handle this issue?

Rep. Klemin: That's also part of the study to see what other states are doing.

Chairman DeKrey: Thank you. Further testimony in support of HCR 3036. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to HCR 3036?

Rep. Kretschmar: I move a Do Pass and place it on the Consent calendar.

Rep. Delmore: Second the motion.

13 YES 0 NO 1 ABSENT

DO PASS AND PLACE ON CONSENT CALENDAR

CARRIER: Rep. Klemin

Date: 2/14/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3036

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☑ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Kretschmar Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos					
Rep. Steiner	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Klemin

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

Place on Consent Calendar.

REPORT OF STANDING COMMITTEE

HCR 3036: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS** and **BE PLACED ON THE CONSENT CALENDAR** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HCR 3036 was placed on the Tenth order on the calendar.

2011 SENATE JUDICIARY

HCR 3036

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HCR3036
3/9/11
Job #15186

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

To study the trial by jury rights of a person charged

Minutes: There is attached written testimony

Senator Nething – Chairman

Representative Klemin – District 47- See written testimony.

Aaron Birst – Association of Counties – In support of the bill. He would also like to see the study look at constitutional right to a jury trial in a traffic ticket. He said his members are doing jury trials on $20 traffic tickets where you cannot be sentenced to jail.

Senator Olafson – Said that it appears this is a mandatory study not a shall consider.

Birst – Said he would hope it does get studied.

Senator Nething – Asks Rep. Klemin if sees any problem of amending that request into the study.

Rep. Klemin – Said he is receptive to putting it in.

Opposed – 0
Neutral – 0

Closed the hearing on 3036

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HCR3036
3/22/11
Job #15832

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

To study the trial by jury rights of a person charged.

Minutes:

Senator Nething – Chairman

Committee work

Committee discusses the amendment and the language it removes. They make a "friendly correction".

Senator Sitte moves the amendment
Senator Sorvaag seconds
Verbal vote – all yes

Senator Sitte moves a do pass as amended
Senator Nelson seconds
Roll call vote
6 yes, 0 no

Senator Sitte will carry

Proposed Amendment to HCR 3036

Page 1, line 5, remove "and"

Page 1, line 5, insert a semicolon after "states" and insert "and the right to a jury trial in civil traffic cases"

Page 1, line 6, remove "that"

Page 1, line 8, remove "that"

Page 1, line 11, remove "that"

Page 1, line 14, remove "that"

Page 1, after line 16, insert "**WHEREAS**; the North Dakota Supreme Court has found a constitutional right to a jury trial in civil traffic cases; and

Page 1, line 23, remove "That"

Page 1, line 23, replace the first "the" with "The"

Page 2, line 2, after the second "and" insert "study the feasibility and desirability of eliminating a jury trial right for civil traffic tickets"

Page 2, line 3, remove "that"

Date: 3/22/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3036

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Sitte Seconded By Senator Sorvaag

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman			Carolyn Nelson		
Curtis Olafson – V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Senator _____

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

Verbal - all yes

Date: 3/22/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3036

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Sitte Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson – V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Sitte

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

REPORT OF STANDING COMMITTEE

HCR 3036: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3036 was placed on the Sixth order on the calendar.

Page 1, line 5, remove "and"

Page 1, line 5, after "states" insert "; and the right to a jury trial in civil traffic cases"

Page 1, line 6, remove "that"

Page 1, line 8, remove "that"

Page 1, line 11, remove "that"

Page 1, line 14, remove "that"

Page 1, after line 16, insert:

"**WHEREAS**, the North Dakota Supreme Court has found a constitutional right to a jury trial in civil traffic cases; and"

Page 2, line 2, remove the first "and"

Page 2, line 2, after the second "and" insert "the feasibility and desirability of eliminating a jury trial right for civil traffic tickets; and"

Renumber accordingly

2011 TESTIMONY

HCR 3036

3036 (1)

HOUSE CONCURRENT RESOLUTION 3036
TESTIMONY OF LAWRENCE R. KLEMIN
SENATE JUDICIARY COMMITTEE
MARCH 9, 2011

Mr. Chairman and members of the Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here to testify in support of House Concurrent Resolution 3036.

Section 13 of Article I of the North Dakota Constitution provides that a person accused of a crime for which the person may be confined for a period of **more than** one year has the right to a trial by jury of 12 persons. The crimes that the Constitution refers to are all felonies. The right to a trial by jury is not required in the Constitution for misdemeanors or infractions.

The maximum penalty for a Class A misdemeanor is one year's imprisonment, or a fine of $2,000, or both. N.D.C.C. §12.1-32-01(5). The maximum penalty for a Class B misdemeanor is thirty days' imprisonment, or a fine of $1,000, or both. N.D.C.C. §12.1-32-01(6). The maximum penalty for an infraction is a fine of $500. However, a person who has previously been convicted of an infraction may be sentenced as though convicted of a Class B misdemeanor. In that case, the complaint must specify that the offense is a misdemeanor. N.D.C.C. §12.1-32-01(7).

North Dakota statutory law provides that a person charged with the commission of a felony or a misdemeanor has the right to a trial by jury. N.D.C.C. §29-01-06(5). The defendant, whether in a felony case or in a misdemeanor case, may waive a trial by jury and have a bench trial before the judge. N.D.C.C. §29-16-02.

In a Class A misdemeanor case, unless a jury trial is waived, the defendant has the right to a trial by jury of 6 jurors, but can make a demand for a trial before 12 jurors. A Class B misdemeanor case has trial by a jury of 6 jurors.

In 2009 and 2010, approximately 118 misdemeanor jury trials were held each year, at an annual cost of $35,000 for jury compensation, plus mileage reimbursement. The Supreme Court does not currently keep separate statistics on the number of Class A and Class B jury trials, only the total number of misdemeanor trials.

The purpose of HCR 3036 is to conduct an interim study of misdemeanor jury trials, the cost of the jury trials, and a review of the jury trial process in other states for similar offenses. Since jury trials for misdemeanors are not required by the Constitution, the interim study could consider whether bench trials for either Class A or Class B misdemeanors, or both, provide sufficient due process of law. Another possibility is the elimination of any imprisonment for a Class B misdemeanor, with the maximum penalty then limited to a monetary fine.

I urge support of the interim study provided for in HCR 3036.