

2019 HOUSE JUDICIARY

HB 1244

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1244
1/14/2019
30730

☐ Subcommittee
☐ Conference Committee

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| Committee Clerk: DeLores D. Shimek |
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Explanation or reason for introduction of bill/resolution:

Relating to city fines and penalties and jurisdiction of municipal judges; and to provide a penalty.

Minutes:

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| 1 |
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Acting Chairman Paur: Opened the hearing on HB 1244.

Rep. K. Koppelman: Introduced the bill. It changes the fine amounts and also the ages and deals with municipal judges and their authorities.

Stephanie Dassinger, Deputy Director & Attorney for the ND League of Cities: (Attachment #1) Went over her testimony. This is intended to be a cleanup bill. 1:52-4:40

Rep. Vetter: You are changing it from two in the past seven to three in the last fifteen for the DUI?

Stephanie Dassinger: That is changed in the statute but the change is purely to match what current law says.

Paul Hamers, Municipal Court Judge, Napoléon and Gaggle. Also a member of the executive board for the ND Municipal Judges Association and we support this bill.

Opposition: None

Hearing closed.

Do Pass Motion Made by Representative Satrom: Seconded by Rep. Magrum

Roll Call Vote: 13 Yes 0 No 1 Absent Carrier: Rep. Magrum

Closed

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
H~~1~~244**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Representative Satrom Seconded By Rep. Magrum

| Representatives | Yes | No | Representatives | Yes | No |
|---------------------|-----|----|------------------------|-----|----|
| Chairman Koppelman | X | | Rep. Buffalo | X | |
| Vice Chairman Karls | ABT | | Rep. Karla Rose Hanson | X | |
| Rep. Becker | X | | | | |
| Rep. Terry Jones | X | | | | |
| Rep. Magrum | X | | | | |
| Rep. McWilliams | X | | | | |
| Rep. B. Paulson | X | | | | |
| Rep. Paur | X | | | | |
| Rep. Roers Jones | X | | | | |
| Rep. Satrom | X | | | | |
| Rep. Simons | X | | | | |
| Rep. Vetter | X | | | | |
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Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Magrum

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

REPORT OF STANDING COMMITTEE

HB 1244: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS**
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1244 was placed on the
Eleventh order on the calendar.

2019 SENATE JUDICIARY

HB 1244

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1244
2/27/2019
#32910 (6:35)

☐ Subcommittee
☐ Conference Committee

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| Committee Clerk: Meghan Pegel |
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Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 40-05-06, subsection 3 of section 40-18-01, and section 40-18-14 of the North Dakota Century Code, relating to city fines and penalties and jurisdiction of municipal judges; and to provide a penalty.

Minutes:

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| 1 Attachment |
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Chair Larson begins discussion on HB 1244. Senator Osland was absent.

Stephanie Dassinger, Deputy Director and Attorney for the ND League of Cities, testifies in favor (see attachment #1)

(3) Vice Chairman Dwyer: What is in title section 40 Code of Federal Regulations, section 403?

Dassinger: It has to do with the requirements for a public waste water treatment. I don't know if at some point in time that had penalty provisions in it on the federal system, but there is not now. I didn't have enough time between when this was brought to me and when we asked Representative Koppelman to put together a bill to see if there is a possibility that this section of code isn't necessary. I don't know if that's something that needs to be in there, but I didn't want to take something out.

Senator Myrdal: In section 2 you said that it doesn't do any changes to the DUI as it currently stands; it just matches it with a different part of the code. Please expand on that. It changes a lot of numbers in there.

Dassinger: Currently under DUI law as it appears in 38-08-01, once you reach that third DUI, it becomes a class a misdemeanor. Once you reach that fourth DUI in 15 years, it becomes a class c felony. Municipal court does not have jurisdiction to hear class a misdemeanors and class c felonies, so what this is saying is that once we've reached those levels of offenses, we have to dismiss it and they have to go file in district court. When those lookback periods were changed under general DUI, this section got missed and those lookback periods were not changed. This is to make it match.

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Senator Myrdal: Motions for a Do Pass.
Senator Bakke: Seconds.

A Roll Call Vote was Taken: 5 yeas, 0 nays, 1 absent. Motion carries.

Senator Myrdal will carry the bill.

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1244**

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Myrdal Seconded By Senator Bakke

| Senators | Yes | No | Senators | Yes | No |
|------------------|-----|----|---------------|-----|----|
| Chair Larson | X | | Senator Bakke | X | |
| Vice Chair Dwyer | X | | | | |
| Senator Luick | X | | | | |
| Senator Myrdal | X | | | | |
| Senator Osland | AB | | | | |
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Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Myrdal

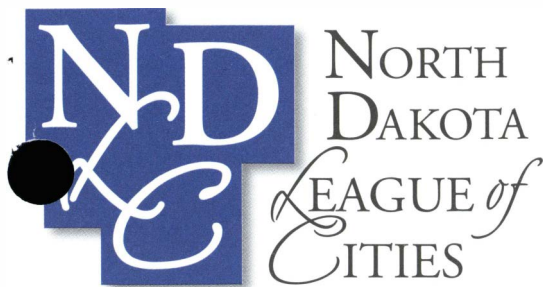
If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1244: Judiciary Committee (Sen. D. Larson, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1244 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1244



#1
HB 1244
1-14-19
BJS

January 14, 2019

House Judiciary Committee
HB 1244

Chairman Koppelman and members of the committee, for the record I am Stephanie Dassinger, deputy director and attorney for the North Dakota League of Cities.

I appear before you today to express the League's support of HB 1244. The bill was drafted to provide cleanup to provisions in the municipal portion of the code.

Section 1 and Section 3 make a municipal judge's penalty provisions consistent with other penalty provisions in the code. Generally, a municipal judge can hear court cases involving a Class B Misdemeanor which is punishable by a maximum of 30 days in jail and/or up to a \$1,500 fine. Section 1 and Section 3 limit a municipal judge's authority to a fine of \$1,000.

This dichotomy results in the following scenario. If someone steals an item from his or her neighbor, in municipal court, that individual would be facing a maximum penalty of 30 days in jail and a \$1,500 fine. If that same person goes to the local grocery store and steals something, since that is considered shoplifting, that person would be facing a maximum penalty of 30 days in jail and a \$1,000 fine in municipal court. However, if both cases were pursued by a states attorney in district court, the penalties for these two offenses would result in a maximum penalty of 30 days in jail and a \$1,500 fine. This bill would fix these inconsistencies.

Section 2 of the bill is a technical fix to make the municipal part of the code match what is the current DUI law. I have attached the pertinent section of section 39-08-01, NDCC, for your convenience. Basically, what that section says is that if a municipal judge has notice that an individual has been convicted of 2 DUI offenses in the past 7 years or 3 DUI offenses within the last 15 years, the municipal court does not have jurisdiction to hear a new DUI offense and the court needs to dismiss the charge.

For these reasons, the League urges the committee to vote DO PASS on HB 1244.

Thank you for your time and consideration.

HB 1244
1-14-19
PJ 2

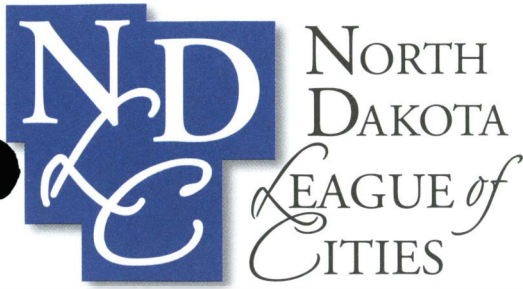
CHAPTER 39-08
REGULATIONS GOVERNING OPERATORS

39-08-01. Persons under the influence of intoxicating liquor or any other drugs or substances not to operate vehicle - Penalty.

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
 - a. That person has an alcohol concentration of at least eight one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.
 - b. That person is under the influence of intoxicating liquor.
 - c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
 - d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.
 - e. That individual refuses to submit to any of the following:
 - (1) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-06.2-10.2 if the individual is driving or is in actual physical control of a commercial motor vehicle; or
 - (2) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-20-01.

The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person. If the individual violated subdivisions a, b, c, or d of this subsection and subdivision e of this subsection and the violations arose from the same incident, for purposes of suspension or revocation of an operator's license, the violations are deemed a single violation and the court shall forward to the department of transportation only the conviction for driving under the influence or actual physical control.

2.
 - a. An individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state who refuses to submit to a chemical test, or tests, required under section 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.
 - b. An individual is not subject to an offense under this section for refusal to submit to an onsite screening test under section 39-20-14 if the person submits to a chemical test under section 39-20-01 or 39-06.2-10.2 for the same incident. Upon the individual's refusal to submit to an onsite screening test, the police officer shall inform the individual that the individual may remedy the refusal if the individual takes a chemical test under section 39-20-01 or 39-06.2-10.2 for the same incident.
3. An individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a seven-year period, of a class A misdemeanor for a third offense in a seven-year period, and of a class C felony for any fourth or subsequent offense within a fifteen-year period. The minimum penalty for violating this section is as provided in subsection 5. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.



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HB 1244
2-27-19

February 27, 2019

Senate Judiciary Committee
HB 1244

Chair Larson and members of the committee, for the record I am Stephanie Dassinger, deputy director and attorney for the North Dakota League of Cities.

HB 1244 is a bill to cleanup and clarify portions of the municipal code.

Sections 1 and 3 of the bill change the maximum penalty from \$1,000 to \$1,500 for violations of the law involving shoplifting, vandalism and criminal mischief and for incidents of contempt when they are in municipal court. The \$1,500 is consistent with a municipal court's general jurisdiction which is equivalent to a class B Misdemeanor and carries a maximum fine of \$1,500. It appears these sections of the code were overlooked when the penalties for offenses were updated in 2013.

As the law currently stands, if someone is charged with shoplifting in municipal court for stealing an item from the local grocery store, he or she would be facing a maximum fine of \$1,000. On the other hand, if someone is charged with theft from a neighbor in municipal court, he or she would be facing a maximum fine of \$1,500. Sections 1 and 3 of the bill address this inconsistency.

Section 2 of the bill makes the municipal portion of the code match what is currently in section 39-08-01 of the North Dakota Century Code for DUI law. Section 2 does not make any substantive changes to DUI law it is purely for consistency.

For these reasons, the League urges the committee to vote DO PASS on HB 1244.

Thank you for your time and consideration.