

Sixty-ninth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1032

Introduced by

Legislative Management

(Judiciary Committee)

1 A BILL for an Act to create and enact a new subsection to section 27-05-06 and chapter 40-18.1
2 of the North Dakota Century Code, relating to jurisdiction of district courts and municipal court
3 requirements, jurisdiction, procedures, and processes; to amend and reenact subsection 1 of
4 section 29-07-01.1 of the North Dakota Century Code, relating to indigent defense; and to
5 repeal sections 40-11-10, 40-11-11, 40-11-12, and 40-11-13 and chapter 40-18 of the North
6 Dakota Century Code, relating to ordinance violations and municipal judges.

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

8 **SECTION 1.** A new subsection to section 27-05-06 of the North Dakota Century Code is
9 created and enacted as follows:

10 Power to hear and determine all actions and proceedings arising from the
11 enforcement of city ordinances in a city:

12 a. With a population of fewer than five thousand in which there is not a municipal
13 court or municipal judge under chapter 40-18.1.

14 b. That has entered an agreement under section 40-18.1-22 or 40-18.1-24.

15 **SECTION 2. AMENDMENT.** Subsection 1 of section 29-07-01.1 of the North Dakota
16 Century Code is amended and reenacted as follows:

17 1. Lawyers provided to represent indigent persons must be compensated at a
18 reasonable rate to be determined by the commission on legal counsel for indigents.
19 Expenses necessary for the adequate defense of an indigent person prosecuted in
20 district court, other than for a violation of a home rule county's ordinance, when
21 approved by the commission, must be paid by the state. Expenses necessary for the
22 adequate defense of an indigent person prosecuted for violation of a home rule

county's ordinance must be paid by the home rule county. Expenses necessary for the adequate defense of an indigent person prosecuted ~~in~~for a violation of a municipal court ordinance, when approved by the judge, must be paid by the city in which the alleged offense took place. The ~~city shall~~city shall also pay the expenses in any matter transferred to district court ~~pursuant to~~under section ~~40-18-06.2 or~~
~~40-18-15.1~~40-18.1-18, 40-18.1-22, 40-18.1-23, or 40-18.1-24, in any appeal taken to district court from a judgment of conviction in municipal court ~~pursuant to~~under section ~~40-18-19~~40-18.1-19, and in an appeal or postconviction matter seeking relief from a conviction resulting from violation of a municipal ordinance. A defendant requesting representation by counsel at public expense, or for whom counsel provided at public expense without a request is considered appropriate by the court, shall submit an application for indigent defense services. For an application for indigent defense services in the district court, a nonrefundable application fee of thirty-five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the case, the fee amount must be added to the amount to be reimbursed under this section. Application fees collected under this subsection must be forwarded for deposit in the indigent defense administration fund established under subsection 4.

SECTION 3. Chapter 40-18.1 of the North Dakota Century Code is created and enacted as follows:

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

1. The governing body of a city may, by ordinance or resolution, establish a municipal court which is a part of the unified judicial system of this state. The supreme court may supervise and sanction municipal courts and municipal court judges. A staff attorney with the state court administrator's office may advise a municipal court judge and clerk on an administrative and procedural court issue.
2. The governing body shall, by ordinance, provide for the election of at least one full-time or part-time judge.
3. A city that establishes a municipal court shall provide:

- 1 a. Facilities for the use of the municipal court to conduct trials, hearings, and other
2 necessary duties; and
- 3 b. Necessary supplies and technology and sufficient clerical and nonjudicial support
4 personnel to assist the municipal judge.
- 5 4. Municipal court must be held at the time and place designated by the municipal judge.
6 The court schedule must be posted publicly by filing the notice with the city auditor's
7 office and posting the notice on the city's website if the city has a website.
- 8 5. Two or more cities, by resolution, may enter an agreement establishing a single joint
9 municipal court. A copy of the agreement must be filed with the state court
10 administrator. The agreement must include the name of the joint municipal court. As
11 used in this chapter, "municipal court" includes a joint municipal court.
- 12 6. Two or more cities, by resolution, may enter an agreement to provide jointly for
13 courtrooms, chambers, equipment, supplies, and staff for municipal courts and agree
14 to elect judges without establishing a joint municipal court. A copy of the agreement
15 must be filed with the state court administrator. If municipal courts share facilities and
16 resources in this manner, the identities of the individual courts must be expressed in
17 the case caption.
- 18 7. An agreement under subsection 5 or 6 may be terminated in the manner provided in
19 the agreement. If the agreement does not include a provision for termination, the
20 agreement may be terminated by any party upon the provision of not fewer than thirty
21 days notice to the governing bodies.
- 22 8. The municipal court is not a court of record.

23 **40-18.1-02. Jurisdiction.**

- 24 1. The municipal court has jurisdiction to hear, try, and determine offenses against the
25 ordinances of any city served by the court.
- 26 2. Notwithstanding any other provision of law, the municipal court does not have
27 jurisdiction to hear, try, and determine:
 - 28 a. An offense that would be a violation of section 39-08-01 or equivalent ordinance,
29 if the individual charged with the offense has twice previously been convicted of a
30 violation of section 39-08-01 or equivalent ordinance within the seven years
31 preceding the commission of the offense charged or if the individual charged with

1 the offense has three times previously been convicted of a violation of section
2 39-08-01 or equivalent ordinance within the fifteen years preceding the
3 commission of the offense charged. If the offense is charged in the municipal
4 court and the municipal judge has notice of a violation of section 39-08-01 or
5 equivalent ordinance twice within the seven years, or three times within the
6 fifteen years, preceding the commission of the offense charged, the municipal
7 judge shall dismiss the charge, without prejudice, and refer the matter to the
8 state's attorney of the county in which the municipal court is located.

9 b. An offense that would be a violation of section 39-08-01 or equivalent ordinance if
10 the judge is not licensed to practice law in this state.

11 c. A domestic violence offense

12 d. A criminal offense, including criminal traffic offenses, against a juvenile, except a
13 municipal court may hear, try, and determine noncriminal offenses against a
14 juvenile if the juvenile is not subject to the exclusive jurisdiction of the juvenile
15 court under chapter 27-20.2.

16 **40-18.1-03. Fitness to proceed.**

17 1. If reason to doubt a defendant's fitness to proceed exists, as defined under section
18 12.1-04-04, the case must be:

19 a. Transferred to the district court for evaluation; or

20 b. Dismissed on motion by the prosecutor.

21 2. The district court shall order the defendant to undergo a fitness to proceed evaluation
22 under chapter 12.1-04. If the defendant is found fit to proceed, the case must be
23 remanded to the municipal court for further proceedings.

24 3. The time to petition to transfer the matter to district court under section 40-18.1-18 is
25 suspended pending determination of the defendant's fitness to proceed.

26 4. If the defendant is found to lack fitness to proceed, the case must be dismissed.

27 5. In proceedings under this section, the city shall provide a prosecuting attorney and, in
28 the case of an indigent defendant, a defense attorney. The city may contract with the
29 county, state, or any person for the prosecution or defense services.

1 **40-18.1-04. Criminal responsibility.**

- 2 1. A case in which the defendant's criminal responsibility at the time of the crime is in
3 question may be transferred to the district court for evaluation upon written request by
4 the defendant. The defendant shall initiate the request within twenty-eight days after
5 arraignment and the district court shall order the defendant to undergo a criminal
6 responsibility evaluation under chapter 12.1-04.1.
- 7 2. Following the evaluation, if the defendant asserts the defense of lack of criminal
8 responsibility, the case must remain in district court for trial. If the defendant does not
9 assert the defense of lack of criminal responsibility, the district court shall remand the
10 case to the municipal court for further proceedings.
- 11 3. In proceedings under this section, the city shall provide a prosecuting attorney and, in
12 the case of an indigent defendant, a defense attorney. The city may contract with the
13 county, state, or any person for the prosecution or defense services.

14 **40-18.1-05. Election of municipal judge - Qualifications.**

- 15 1. A municipal judge must be elected to serve a term of four years and may not hold any
16 other office in the city in which the municipal judge serves as a judge. The city auditor
17 shall notify the state court administrator of the election or appointment of a municipal
18 judge or alternate municipal judge.
- 19 2. Except when prohibited by home rule charter or ordinance, the municipal judge may
20 be a part-time judge and may serve as a municipal judge in more than one city.
- 21 3. A municipal judge in a city with a population of five thousand or more must be licensed
22 to practice law in this state and must be a resident of the city unless the city, by
23 ordinance or resolution, provides the municipal judge is not required to be a resident of
24 the city.
- 25 4. The municipal judge in a city with a population of fewer than five thousand is not
26 required to be licensed to practice law in this state and is not required to be a resident
27 of the city.
- 28 5. The governing body of the city shall fix the compensation of the municipal judge.

29 **40-18.1-06. Demand for change of judge.**

- 30 A party to a proceeding pending in a municipal court may obtain a change of judge under
31 section 29-15-21. The municipal judge must be replaced in accordance with section 40-18.1-07.

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

1. If a vacancy exists in the office of municipal judge by death, resignation, or otherwise,
the governing body of the city shall appoint an individual to fill the vacancy.
2. The governing body may appoint alternate municipal judges to serve when a municipal
judge is unable to serve due to temporary absence, illness, disqualification, or
disability. The alternate judges must be compensated at a rate set by the governing
body.
3. If the alternate municipal judges also are disqualified or unavailable, the chief justice
may appoint a district court judge to a temporary assignment as a municipal court
judge for the purpose of presiding over the case.

40-18.1-08. Clerk of municipal court.

1. The governing body of a city with a municipal court may provide for the office of clerk
of the municipal court, which may include deputy clerks of municipal court. The
governing body of the city shall appoint the clerk and deputy clerk, with the consent of
the municipal judge. The governing body shall fix the salary of the municipal clerk and
deputy clerk.
2. The clerk and deputy clerk of the municipal court shall issue all process of the court,
administer oaths, file and preserve all papers, docket cases, set trials, and perform
other acts necessary to carry out the duties and responsibilities of the court. The clerk
shall receive, account for, and pay on a monthly basis to the city general fund all fines
and forfeited bonds paid into the court.

40-18.1-09. City prosecutor.

1. A prosecutor licensed to practice law in this state must be present for all contested
hearings and proceedings involving a class B misdemeanor in a municipal court.
2. The city shall pay the compensation of the prosecutor and any necessary expenses
incurred in prosecuting a violation of a city ordinance.

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

1. A municipal judge shall consider the following factors when determining whether to
change the venue of a proceeding under this chapter:
 - a. Convenience to the parties and witnesses.

1 **b. Judicial efficiency.**

2 **c. Available facilities.**

3 **d. Administration of justice.**

4 **2. A municipal judge may not change the venue of a proceeding if a party to the**
5 **proceeding objects to the change.**

6 **3. A municipal judge may use contemporaneous audio or audiovisual transmission by**
7 **reliable electronic means in accordance with rule 52 of the North Dakota Supreme**
8 **Court Administrative Rules. A municipal judge who presides over a proceeding through**
9 **contemporaneous audio or audiovisual transmission by reliable electronic means is**
10 **equivalent to a municipal judge who is physically present at the proceeding.**

11 **40-18.1-11. Costs and fees.**

12 **1. A municipal court:**

13 **a. May not assess costs or fees against any individual except as specifically**
14 **provided in this chapter.**

15 **b. May assess a court administration fee and a community service supervision fee**
16 **in an amount not to exceed the amounts allowed under section 29-26-22.**

17 **c. Shall assess the crime victim and witness program fee under section 27-01-10.**

18 **2. The judgment must itemize the fines and fees assessed.**

19 **40-18.1-12. Action for violation of ordinance in corporate name - Previous**
20 **prosecution, recovery, or acquittal no defense.**

21 **An action brought to recover a fine, enforce a penalty, or punish a violation of a city**
22 **ordinance must be brought in the corporate name of the city as plaintiff. A prosecution, recovery,**
23 **or acquittal for the violation of a city ordinance may not constitute a defense to any other**
24 **prosecution of the same individual for any other violation of the ordinance, notwithstanding that**
25 **the different claims for relief existed at the time of the previous prosecution and if united, would**
26 **not have exceeded the jurisdiction of the court.**

27 **40-18.1-13. Summons to issue on violation of ordinance - When warrant of arrest to**
28 **issue.**

29 **An action for a violation of an ordinance is initiated by a uniform complaint under section**
30 **29-05-31 or a complaint in compliance with the North Dakota Rules of Criminal Procedure. If**
31 **there is probable cause to believe a criminal offense has been committed by the individual**

1 charged, an arrest warrant must be issued, except a municipal judge may issue a summons
2 instead of an arrest warrant if the municipal judge has reason to believe the individual charged
3 will appear in response to the summons. An individual arrested under a warrant must be taken
4 without unnecessary delay before the municipal judge to be tried for the alleged offense.

5 **40-18.1-14. Commitment for nonpayment of fines or costs.**

6 Any individual upon whom any fine or costs, or both, has been imposed for violation of a
7 municipal ordinance may, after hearing, be committed upon order of the court to jail or other
8 place provided by the municipality for the incarceration of offenders until the fine or costs, or
9 both, are fully paid. The court may not commit an individual under this section when the reason
10 for the individual's nonpayment of fines or costs is the individual's indigency. A commitment
11 order issued under this section may not exceed thirty days. As used in this section, "fine" does
12 not include a fee established under subsection 2 of section 40-05-06.

13 **40-18.1-15. Fines, fees, and forfeitures for violation of ordinances paid into city**
14 **general fund.**

15 All fines, fees, penalties, and forfeitures collected for a violation of a city ordinance,
16 including those collected as a result of a judgment of a district court rendered under section
17 40-18.1-18, must be paid into the city's general fund.

18 **40-18.1-16. Diagnosis and treatment of individuals convicted of driving while under**
19 **the influence.**

20 If an individual is convicted under an ordinance equivalent to an offense under section
21 39-08-01, the court shall sentence the defendant in accordance with that section.

22 **40-18.1-17. Sentencing alternatives - Suspension of sentence or imposition of**
23 **sentence.**

24 Subject to section 40-05-06, a municipal judge may use the sentencing alternatives
25 provided under section 12.1-32-02 and may suspend any sentence the judge imposes or defer
26 the imposition of any sentence due to the good behavior of an individual adjudged to have
27 committed an offense, or for other reasonable cause, under subsection 3 or 4 of section
28 12.1-32-02, except a municipal judge may not suspend a sentence or the imposition of
29 sentence for driving a motor vehicle in violation of an operator's license suspension, revocation,
30 or restriction or for a violation of section 39-08-01 or equivalent ordinance if the suspension of

1 sentence or suspension of the imposition of sentence is prohibited under section 39-06-17 or
2 39-06-42 or chapter 39-08.

3 **40-18.1-18. Transfer to district court - Expenses of prosecution - Division of funds**
4 **and expenses among city, county, and state.**

5 1. A defendant may request in writing to transfer the case to district court and to exercise
6 the defendant's right to a jury trial within twenty-eight days after arraignment. If the
7 request is filed within twenty-eight days after the arraignment, the judge shall grant the
8 request.

9 2. If the defendant waives a jury trial after a transfer to district court, the district court
10 shall remand the matter to the municipal court for disposition and sentencing if the
11 parties agree to a remand.

12 3. Unless remanded to the municipal court by agreement of the parties, the district court
13 retains jurisdiction for sentencing and enforcement.

14 4. The city shall provide a prosecuting attorney and, in the case of an indigent defendant,
15 a defense attorney. The city may contract with the county, state, or any person for the
16 prosecution or defense services.

17 5. The city, county, and state may agree to a division of any fees, fines, costs, forfeitures,
18 and any other monetary consideration collected from cases transferred under this
19 section, which must be paid to the city general fund and the county treasury and the
20 state general fund at least once each quarter. At the time of payment, the clerk of
21 district court shall account under oath to the city auditor, county treasurer, and state
22 treasurer for all money collected. In the contract, the city, county, and state may agree
23 to a division of expenses, including jury and witness expenses, related to cases
24 transferred under this section. In the absence of a contract, all fees, fines, costs,
25 forfeitures, and any other monetary consideration collected from transferred cases
26 must be deposited in the state general fund.

27 **40-18.1-19. Appeals from determinations of municipal judge.**

28 1. An appeal may be taken to the district court from a judgment of conviction or order
29 deferring imposition of sentence in a municipal court in accordance with the North
30 Dakota Rules of Criminal Procedure.

2. An appeal is perfected by notice of appeal. A perfected appeal to the district court transfers the action to the district court for trial anew. Failure to remove the case under section 40-18.1-18 constitutes waiver of jury trial on appeal.
3. On all appeals from a determination in a municipal court, the district court shall take judicial notice of all of the ordinances of the city.
4. A filing fee may not be required in district court for the filing of an appeal from a judgment of conviction for the violation of a city ordinance.
5. Expenses necessary for the adequate defense of an indigent individual in an appeal to the district court from a judgment of conviction for the violation of a municipal ordinance, as approved by the presiding district judge, must be paid by the city where the alleged offense took place.
6. Unless remanded to the municipal court by agreement of the parties, the district court retains jurisdiction for sentencing and enforcement.

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

A municipal judge may enforce compliance with the court's orders and judgments. The judge may fine or imprison for contempt committed in the judge's presence while holding court, as well as for contempt of process issued, and of orders and judgments made by the judge. If an act or omission constituting a contempt in a municipal court is not committed in the presence of the municipal judge, an affidavit alleging the facts may be filed and a warrant of arrest may be issued on which the individual accused may be arrested and brought before the municipal judge immediately. The individual must be given a reasonable opportunity to employ counsel and defend against the alleged contempt. After hearing the allegations and proof, the municipal judge may discharge the individual or adjudge the individual guilty and may punish by fine, imprisonment, or both. The fine in any case may not exceed one thousand five hundred dollars and the imprisonment may not exceed thirty days.

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

1. If the judgment imposes a fine or assesses a fee, the municipal judge may order a certified copy of the judgment be filed in the office of the clerk of the district court of any county in the state. The clerk of district court shall treat the municipal court

1 judgment in the same manner as a civil judgment of any district court of any county of
2 the state.

3 2. At the time of filing the judgment with the office of the clerk of district court, the
4 municipal court judge shall order an affidavit providing the name and last-known
5 mailing address of the defendant and otherwise complying with section 28-20-15 be
6 filed.

7 3. Upon the filing of the judgment and affidavit, the clerk of municipal court shall mail
8 notice of the filing of the municipal judgment to the defendant at the defendant's last-
9 known address and file proof of mailing with the district court. The notice must include
10 the name and mailing address of the municipal court.

11 4. An execution of other process for enforcement of a municipal court judgment filed
12 under this section may not be issued until ten days after the date the judgment is filed.

13 5. If the defendant shows the district court of any county that an appeal from the
14 judgment is pending or will be taken, the court shall stay enforcement of the municipal
15 court judgment until the appeal is concluded or the time for appeal expires.

16 6. The municipal judge shall order the defendant to pay a filing fee of ten dollars to the
17 clerk of district court.

18 7. Upon filing of the judgment with the district court in accordance with this chapter, the
19 judgment is enforceable by the city only in the same manner as provided for a
20 judgment for money in a civil action.

21 **40-18.1-22. Transfer of municipal ordinance cases to district court.**

22 With the agreement of the state court administrator, the governing body of a city may, by
23 ordinance, transfer some or all of the cases of the municipal court to the district court serving
24 the county in which the city is located without abolishing the municipal court. Cases transferred
25 under this section are deemed district court cases for purposes of appeal. The agreement must
26 provide the city is responsible for providing for the prosecution of the cases and for providing a
27 defense attorney in cases involving an indigent defendant.

28 **40-18.1-23. Abolition of municipal court in a city with a population of fewer than five**
29 **thousand.**

30 1. The governing body of a city with a population of fewer than five thousand having a
31 municipal court may by resolution abolish its municipal court. The jurisdiction of a

1 municipal court abolished by resolution must be transferred to the district court of the
2 district in which the city is located.

3 2. The city auditor shall provide a copy of the resolution abolishing the court to the
4 presiding judge and clerk of court of the district court for the district in which the city is
5 located, the state's attorney for the county in which the city is located, and the state
6 court administrator. The resolution must provide the effective date of the transfer of
7 cases, which must be at least ninety days following the date of the resolution.

8 3. At least ten days before the effective date of the transfer, the clerk of the municipal
9 court shall deliver to the clerk of the district court all cases pending action by the
10 district court after the effective date of the resolution.

11 4. On the effective date of transfer, all proceedings relating to ordinance violations must
12 be within the jurisdiction of the district court. Judgments of courts which cease to exist
13 on the effective date of the resolution continue in effect and the district court may
14 enforce the judgments. Fines, forfeitures, and costs due and unpaid on the effective
15 date of the transfer and those which are subsequently collected on cases pending on
16 the effective date of the transfer must be collected by the district court and remitted to
17 the city.

18 5. The authority, duties, powers, jurisdiction, and term of the municipal judge terminates
19 on the last day of the month in which all municipal cases have been transferred to the
20 district court or the expiration of the judge's term, whichever occurs first.

21 **40-18.1-24. Abolition of municipal court in a city with a population of five thousand or**
22 **more.**

23 1. The governing body of a city with a population of five thousand or more having a
24 municipal court may by resolution abolish its municipal court if the city has entered an
25 agreement with:

26 a. The governing body of the county in which the municipal court is located;

27 b. The presiding judge of the district in which the municipal court is located; and

28 c. The state court administrator's office.

29 2. The agreement must provide for an effective date of the transfer of the municipal court
30 cases to the district court not fewer than one hundred eighty days after the date of the
31 agreement unless otherwise agreed upon.

- 1 3. At least ten days before the effective date of the transfer, the clerk of the municipal
2 court shall deliver to the clerk of the district court all cases pending action by the
3 district court after the effective date of the transfer.
- 4 4. On the effective date of the transfer, all proceedings relating to ordinance violations
5 must be within the jurisdiction of the district court. Judgments of courts which cease to
6 exist on the effective date of the agreement continue in effect and the district court
7 may enforce the judgments. Fines, forfeitures, and costs due and unpaid on the
8 effective date of the transfer and those which are subsequently collected on cases
9 pending on the effective date must be collected by the district court and remitted to the
10 city.
- 11 5. The authority, duties, powers, jurisdiction, and term of the municipal judge terminates
12 on the last day of the month in which all municipal cases have been transferred to the
13 district court or the expiration of the judge's term, whichever occurs first.

14 **40-18.1-25. Compliance with rules adopted by the supreme court.**

- 15 1. The supreme court shall adopt rules governing:
 - 16 a. Municipal court procedure;
 - 17 b. Qualifications and education of municipal judges;
 - 18 c. Qualification and education of municipal clerks;
 - 19 d. Requirements of municipal court facilities; and
 - 20 e. Records to be maintained and reports to be filed by the municipal court.
- 21 2. Each municipal judge and alternate judge shall comply with the rules established by
22 the supreme court. The city shall reimburse the judge for necessary travel expenses,
23 meals, and lodging relating to compliance with the rules regarding qualifications and
24 education in the same manner as other city officials are reimbursed.
- 25 3. If a municipal judge or alternate municipal judge fails to fulfill the requirements of the
26 rules established by the supreme court, the judicial conduct commission may order the
27 municipal judge not preside over municipal court proceedings.

28 **SECTION 4. REPEAL.** Sections 40-11-10, 40-11-11, 40-11-12, and 40-11-13 and chapter
29 40-18 of the North Dakota Century Code are repealed.