

2025 HOUSE POLITICAL SUBDIVISIONS

HB 1032

2025 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1032
1/9/2025

Relating to ordinance violations and municipal judges.
--

10:03 a.m. Chairman Longmuir opened the hearing.

Members Present: Chairman Donald W. Longmuir, Vice-Chairman Clayton Fegley, Vice-Chairman Jim Jonas, Representatives Macy Bolinske, Patrick R. Hatlestad, Matthew Heilman, Lawrence R. Klemin, Mike Motschenbacher, Mitch Ostile, Nathan Toman, Jonathan Warrey, LaurieBeth Hager

Members Absent: Representative Davis

Discussion Topics:

- Municipal Court procedures and processes
- Differences between municipal courts and courts of record
- Use of audio and video recording devices in municipal courts

10:05 a.m. Sara Behrens, Staff Attorney with the North Dakota State Court Administrator's Office, testified in favor and provided testimony #28303.

10:44 a.m. Stephanie Dassinger Engebretson, Deputy Director and Attorney for the North Dakota League of Cities, testified in favor and provided testimony #28340 and #28339.

11:03 a.m. Trent Barkus, West Fargo Municipal Judge, an alternate Judge in Fargo and a Board Member of the Municipal Judge's Association, testified in favor and provided testimony #28301.

11:18 a.m. Chairman Longmuir closed the hearing.

Wyatt Armstrong, Committee Clerk

**TESTIMONY OF
JUDGE TRENT N. BARKUS
BEFORE THE 68th
LEGISLATIVE SESSION
HOUSE JUDICIARY
COMMITTEE JANUARY 9, 2025
IN SUPPORT OF H.B. 1032**

Chairman Longmuir, members of the House Political Subdivisions Committee, my name is Trent Barkus, I'm the Municipal Judge in West Fargo, an alternate Judge in Fargo and a Board Member of the Municipal Judge's Association. I am here today to testify in support of House Bill 1032.

The 81 Municipal Courts in North Dakota play a vital role in our communities and legal system. This bill was a collaboration with the Supreme Court, League of Cities and the Municipal Judges. The bill allows not only cities flexibility with how they run the courts but also modernizes Chapter 40-18 with the first update since at least the 1990s.

I ask for your favorable support of the bill and am pleased to stand for any questions you may have. Thank you.

House Bill 1032
House Political Subdivisions Committee
Testimony Presented by Sara Behrens
January 9, 2025

Good morning Chairman Longmuir, 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.

We did agree to some minor amendments from the League of Cities which Ms. Engebretson will be providing. I will mention them where applicable as I go through the sections of the bill.

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 4-18.1. 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.

We've proposed a clarifying amendment to the first line to refer back to the fitness to proceed chapter.

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 have proposed an amendment to 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 petition is filed within the 28 days the request must be granted. We're proposing an amendment to change "petition" to "request." This will allow more informal type letter requests to be filed. 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.

North Dakota Municipal Court Fact Sheet – January 2025

Total Courts: 73

Total Judges (not alternates) – 54

Total Law-Trained Judges – 21 (39%)

Total Alternates (not a judge for another city) – 10 (8 law-trained)

Population 2020 US Census

- Courts in cities with under 100 – 3
- Courts in cities under 1,000 but more than 100 – 38
- Courts in cities over 1,000 but less than 5,000 – 20
- Courts in cities over 5,000 - 12

Smallest city with a court – Spring Book - population 37

Largest city without a court – Watford City – population 6,207

Additional Notes

- There are 355 incorporated cities in North Dakota, 73 have municipal courts (about 20%).
- Total number of municipal contracts with district court for all Cases (NDCC 40-18-06.2): 94

PROPOSED AMENDMENTS TO**BILL NO. 1032**

Legislative Assembly
of North Dakota

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
23 county's ordinance must be paid by the home rule county. Expenses necessary for the

adequate defense of an indigent person prosecuted ~~infor 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:
 - a. Facilities for the use of the municipal court to conduct trials, hearings, and other necessary duties; and

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

40-18.1-02. Jurisdiction.

1. The municipal court has jurisdiction to hear, try, and determine offenses against the ordinances of any city served by the court.
2. Notwithstanding any other provision of law, the municipal court does not have jurisdiction to hear, try, and determine:
- a. An offense that would be a violation of section 39-08-01 or equivalent ordinance, if the individual charged with the offense has twice previously been convicted of a violation of section 39-08-01 or equivalent ordinance within the seven years preceding the commission of the offense charged or if the individual charged with the offense has three times previously been convicted of a violation of section 39-08-01 or equivalent ordinance within the fifteen years preceding the commission of the offense charged. If the offense is charged in the municipal court and the municipal judge has notice of a violation of section 39-08-01 or

equivalent ordinance twice within the seven years, or three times within the fifteen years, preceding the commission of the offense charged, the municipal judge shall dismiss the charge, without prejudice, and refer the matter to the state's attorney of the county in which the municipal court is located.

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

c. A domestic violence offense

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

40-18.1-03. Fitness to proceed.

1. ~~When~~ Whenever there is reason to doubt a defendant's fitness to proceed ~~is in question,~~ as defined in section 12.1-04-04, the case must be:

a. Transferred to the district court for evaluation; or

b. Dismissed on motion by the prosecutor.

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

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

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

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

40-18.1-04. Criminal responsibility.

1. A case in which the defendant's criminal responsibility at the time of the crime is in question may be transferred to the district court for evaluation upon written request by the defendant. The defendant shall initiate the request within twenty-eight days after arraignment and the district court shall order the defendant to undergo a criminal responsibility evaluation under chapter 12.1-04.1.

2. Following the evaluation, if the defendant asserts the defense of lack of criminal responsibility, the case must remain in district court for trial. If the defendant does not

1 assert the defense of lack of criminal responsibility, the district court shall remand the
2 case to the municipal court for further proceedings.

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

6 **40-18.1-05. Election of municipal judge - Qualifications.**

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

21 **40-18.1-06. Demand for change of judge.**

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

24 **40-18.1-07. Vacancy in office of municipal judge - Disqualification - Temporary**
25 **absence of municipal judge.**

- 26 1. If a vacancy exists in the office of municipal judge by death, resignation, or otherwise,
27 the governing body of the city shall appoint an individual to fill the vacancy.
- 28 2. The governing body may appoint alternate municipal judges to serve when a municipal
29 judge is unable to serve due to temporary absence, illness, disqualification, or
30 disability. The alternate judges must be compensated at a rate set by the governing
31 body.

- 1 3. If the alternate municipal judges also are disqualified or unavailable, the chief justice
2 may appoint a district court judge to a temporary assignment as a municipal court
3 judge for the purpose of presiding over the case.

4 **40-18.1-08. Clerk of municipal court.**

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

15 **40-18.1-09. City prosecutor.**

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

20 **40-18.1-10. Change of venue - Reliable electronic means.**

- 21 1. A municipal judge shall consider the following factors when determining whether to
22 change the venue of a proceeding under this chapter:
- 23 a. Convenience to the parties and witnesses.
24 b. Judicial efficiency.
25 c. Available facilities.
26 d. Administration of justice.
- 27 2. A municipal judge may not change the venue of a proceeding if a party to the
28 proceeding objects to the change.
- 29 3. A municipal judge may use contemporaneous audio or audiovisual transmission by
30 reliable electronic means in accordance with rule 52 of the North Dakota Supreme
31 Court Administrative Rules. A municipal judge who presides over a proceeding through
32 contemporaneous audio or audiovisual transmission by reliable electronic means is
33 equivalent to a municipal judge who is physically present at the proceeding.

1 **40-18.1-11. Costs and fees.**

2 1. A municipal court:

3 a. May not assess costs or fees against any individual except as specifically
4 provided in this chapter.

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

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

8 2. The judgment must itemize the fines and fees assessed.

9 **40-18.1-12. Action for violation of ordinance in corporate name - Previous**
10 **prosecution, recovery, or acquittal no defense.**

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

17 **40-18.1-13. Summons to issue on violation of ordinance - When warrant of arrest to**
18 **issue.**

19 An action for a violation of an ordinance is initiated by a uniform complaint under section
20 29-05-31 or a complaint in compliance with the North Dakota Rules of Criminal Procedure. If
21 there is probable cause to believe a criminal offense has been committed by the individual
22 charged, an arrest warrant must be issued, except a municipal judge may issue a summons
23 instead of an arrest warrant if the municipal judge has reason to believe the individual charged
24 will appear in response to the summons. An individual arrested under a warrant must be taken
25 without unnecessary delay before the municipal judge to be tried for the alleged offense.

26 **40-18.1-14. Commitment for nonpayment of fines or costs.**

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

1 **40-18.1-15. Fines, fees, and forfeitures for violation of ordinances paid into city**
2 **general fund.**

3 All fines, fees, penalties, and forfeitures collected for a violation of a city ordinance,
4 including those collected as a result of a judgment of a district court rendered under section
5 40-18.1-18, must be paid into the city's general fund.

6 **40-18.1-16. Diagnosis and treatment of individuals convicted of driving while under**
7 **the influence.**

8 If an individual is convicted under an ordinance equivalent to an offense under section
9 39-08-01, the court shall ~~order the individual to an appropriate licensed addiction treatment~~
10 ~~program for addiction evaluation and require the individual to complete any recommended~~
11 ~~treatment~~ sentence the defendant in accordance with that section.

12 **40-18.1-17. Sentencing alternatives - Suspension of sentence or imposition of**
13 **sentence.**

14 Subject to section 40-05-06, a municipal judge may use the sentencing alternatives
15 provided under section 12.1-32-02 and may suspend any sentence the judge imposes or defer
16 the imposition of any sentence due to the good behavior of an individual adjudged to have
17 committed an offense, or for other reasonable cause, under subsection 3 or 4 of section
18 12.1-32-02, except a municipal judge may not suspend a sentence or the imposition of
19 sentence for driving a motor vehicle in violation of an operator's license suspension, revocation,
20 or restriction or for a violation of section 39-08-01 or equivalent ordinance if the suspension of
21 sentence or suspension of the imposition of sentence is prohibited under section 39-06-17 or
22 39-06-42 or chapter 39-08.

23 **40-18.1-18. Transfer to district court - Expenses of prosecution - Division of funds**
24 **and expenses among city, county, and state.**

- 25 1. A defendant may ~~file a petition~~ request in writing to transfer the case to district court
26 and to exercise the defendant's right to a jury trial within twenty-eight days after
27 arraignment. If the ~~petition request~~ is filed within twenty-eight days after the
28 arraignment, the judge shall grant the ~~petition request~~ .
- 29 2. If the defendant waives a jury trial after a transfer to district court, the district court
30 shall remand the matter to the municipal court for disposition and sentencing if the
31 parties agree to a remand.
- 32 3. Unless remanded to the municipal court by agreement of the parties, the district court
33 retains jurisdiction for sentencing and enforcement.

- 1 4. The city shall provide a prosecuting attorney and, in the case of an indigent defendant,
2 a defense attorney. The city may contract with the county, state, or any person for the
3 prosecution or defense services.
- 4 5. The city, county, and state may agree to a division of any fees, fines, costs, forfeitures,
5 and any other monetary consideration collected from cases transferred under this
6 section, which must be paid to the city general fund and the county treasury and the
7 state general fund at least once each quarter. At the time of payment, the clerk of
8 district court shall account under oath to the city auditor, county treasurer, and state
9 treasurer for all money collected. In the contract, the city, county, and state may agree
10 to a division of expenses, including jury and witness expenses, related to cases
11 transferred under this section. In the absence of a contract, all fees, fines, costs,
12 forfeitures, and any other monetary consideration collected from transferred cases
13 must be deposited in the state general fund.

14 **40-18.1-19. Appeals from determinations of municipal judge.**

- 15 1. An appeal may be taken to the district court from a judgment of conviction or order
16 deferring imposition of sentence in a municipal court in accordance with the North
17 Dakota Rules of Criminal Procedure.
- 18 2. An appeal is perfected by notice of appeal. A perfected appeal to the district court
19 transfers the action to the district court for trial anew. Failure to remove the case under
20 section 40-18.1-18 constitutes waiver of jury trial on appeal.
- 21 3. On all appeals from a determination in a municipal court, the district court shall take
22 judicial notice of all of the ordinances of the city.
- 23 4. A filing fee may not be required in district court for the filing of an appeal from a
24 judgment of conviction for the violation of a city ordinance.
- 25 5. Expenses necessary for the adequate defense of an indigent individual in an appeal to
26 the district court from a judgment of conviction for the violation of a municipal
27 ordinance, as approved by the presiding district judge, must be paid by the city where
28 the alleged offense took place.
- 29 6. Unless remanded to the municipal court by agreement of the parties, the district court
30 retains jurisdiction for sentencing and enforcement.

1 **40-18.1-20. Municipal judge may enforce orders and judgments and punish for**
2 **contempt.**

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

14 **40-18.1-21. Judgment for fines, fees, or costs - Procedure.**

- 15 1. If the judgment imposes a fine or assesses a fee or cost, the municipal judge may
16 order an authenticated copy of the judgment be filed in the office of the clerk of the
17 district court of any county in the state. The clerk of district court shall treat the
18 municipal court judgment in the same manner as a civil judgment of any district court
19 of any county of the state.
- 20 2. At the time of filing the judgment with the office of the clerk of district court, the
21 municipal court judge shall order an affidavit providing the name and last-known
22 mailing address of the defendant and otherwise complying with section 28-20-15 be
23 filed.
- 24 3. Upon the filing of the judgment and affidavit, the clerk of municipal court shall mail
25 notice of the filing of the municipal judgment to the defendant at the defendant's last-
26 known address and file proof of mailing with the district court. The notice must include
27 the name and mailing address of the municipal court.
- 28 4. An execution of other process for enforcement of a municipal court judgment filed
29 under this section may not be issued until ten days after the date the judgment is filed.
- 30 5. If the defendant shows the district court of any county that an appeal from the
31 judgment is pending or will be taken, the court shall stay enforcement of the municipal
32 court judgment until the appeal is concluded or the time for appeal expires.

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

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

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

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

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

1. The governing body of a city with a population of fewer than five thousand having a municipal court may by resolution abolish its municipal court. The jurisdiction of a municipal court abolished by resolution must be transferred to the district court of the district in which the city is located.

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

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

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

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

4 **40-18.1-24. Abolition of municipal court in a city with a population of five thousand or**
5 **more.**

- 6 1. The governing body of a city with a population of five thousand or more having a
7 municipal court may by resolution abolish its municipal court if the city has entered an
8 agreement with:
- 9 a. The governing body of the county in which the municipal court is located;
10 b. The presiding judge of the district in which the municipal court is located; and
11 c. The state court administrator's office.
- 12 2. The agreement must provide for an effective date of the transfer of the municipal court
13 cases to the district court not fewer than one hundred eighty days after the date of the
14 agreement unless otherwise agreed upon.
- 15 3. At least ten days before the effective date of the transfer, the clerk of the municipal
16 court shall deliver to the clerk of the district court all cases pending action by the
17 district court after the effective date of the transfer.
- 18 4. On the effective date of the transfer, all proceedings relating to ordinance violations
19 must be within the jurisdiction of the district court. Judgments of courts which cease to
20 exist on the effective date of the agreement continue in effect and the district court
21 may enforce the judgments. Fines, forfeitures, and costs due and unpaid on the
22 effective date of the transfer and those which are subsequently collected on cases
23 pending on the effective date must be collected by the district court and remitted to the
24 city.
- 25 5. The authority, duties, powers, jurisdiction, and term of the municipal judge terminates
26 on the last day of the month in which all municipal cases have been transferred to the
27 district court or the expiration of the judge's term, whichever occurs first.

28 **40-18.1-25. Compliance with rules adopted by the supreme court.**

- 29 1. The supreme court shall adopt rules governing:
- 30 a. Municipal court procedure;
31 b. Qualifications and education of municipal judges;
32 c. Qualification and education of municipal clerks;
33 d. Requirements of municipal court facilities; and

1 e. Records to be maintained and reports to be filed by the municipal court.

2 2. Each municipal judge and alternate judge shall comply with the rules established by
3 the supreme court. The city shall reimburse the judge for necessary travel expenses,
4 meals, and lodging relating to compliance with the rules regarding qualifications and
5 education in the same manner as other city officials are reimbursed.

6 3. If a municipal judge or alternate municipal judge fails to fulfill the requirements of the
7 rules established by the supreme court, the judicial conduct commission may order the
8 municipal judge not preside over municipal court proceedings.

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



January 9, 2025

House Political Subdivisions

HB 1032

Rep. Donald W. Longmuir, Chair

For the record, I am Stephanie Dassinger Engebretson. I am appearing on behalf of the North Dakota League of Cities, in support of HB 1032. I am the deputy director and attorney for the North Dakota League of Cities.

HB 1032 is the result of an interim study of municipal courts. The study sought to clarify several sections in the Century Code related to municipal courts and is the result of collaboration between the Interim Legislative Judiciary Committee, the North Dakota Supreme Court, the Municipal Judges Association, and the North Dakota League of Cities.

The bill repeals NDCC ch. 40-18 and replaces it with a new chapter NDCC ch. 40-18.1. A lot of the requirements related to municipal courts stay the same under the bill; however, there are a few changes I want to highlight for the committee.

The bill creates jurisdiction in district court for violations of municipal ordinances in cities under 5,000 when they do not have a municipal court. We have had instances where smaller cities have had challenges setting up a municipal court or do not have one and need a place to resolve a municipal ordinance violation.

The bill adds a process for the municipal court to refer a class B misdemeanor to district court when a fitness to proceed issue arises. Under the current law, the only option is usually for the court to dismiss a class B misdemeanor. It also adds a section to allow for transferring a case to district court for issues surrounding criminal responsibility.

The bill provides that in cities with a population over 5,000, the city can provide by ordinance for a judge not being required to be a resident of the city. Currently, in cities over 5,000 population, the judge must be a resident of the city.

2025 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1032
1/10/2025

Relating to ordinance violations and municipal judges.
--

9:09 a.m. Chairman Longmuir opened the hearing.

Members Present: Chairman Donald W. Longmuir, Vice-Chairman Clayton Fegley, Vice-Chairman Jim Jonas, Representatives Macy Bolinske, Patrick R. Hatlestad, Matthew Heilman, Lawrence R. Klemin, Mike Motschenbacher, Mitch Ostlie, Nathan Toman, Jonathan Warrey, LaurieBeth Hager

Members Absent: Representative Jayme Davis

Discussion Topics:

- Complicated nature of the bill.
- House Bills on the Consent Calendar
- Consent Calendar Process

9:11 a.m. Representative Klemin moved a vocal amendment to remove the words "or costs" from section 40-18.1-21 and page 10 line 15, as well as change the word "authenticated" to "certified".

9:15 a.m. Representative Hager seconded the motion.

Representatives	Vote
Representative Donald W. Longmuir	Y
Representative Clayton Fegley	Y
Representative Jim Jonas	Y
Representative Macy Bolinske	Y
Representative Jayme Davis	A
Representative LaurieBeth Hager	Y
Representative Patrick R. Hatlestad	Y
Representative Matthew Heilman	Y
Representative Lawrence R. Klemin	Y
Representative Mike Motschenbacher	Y
Representative Mitch Ostlie	Y
Representative Nathan Toman	Y
Representative Jonathan Warrey	Y

Motion passed 12-0-1.

9:18 a.m. Representative Klemin moved a Do Pass as Amended.

Representative Hatlestad seconded the Motion.

Representatives	Vote
Representative Donald W. Longmuir	Y
Representative Clayton Fegley	Y
Representative Jim Jonas	Y
Representative Macy Bolinske	Y
Representative Jayme Davis	A
Representative LaurieBeth Hager	Y
Representative Patrick R. Hatlestad	Y
Representative Matthew Heilman	Y
Representative Lawrence R. Klemin	Y
Representative Mike Motschenbacher	Y
Representative Mitch Ostlie	Y
Representative Nathan Toman	Y
Representative Jonathan Warrey	Y

Motion passed 12-0-1.

Representative Klemin will carry the bill.

9:26 a.m. Chairman Longmuir closed the hearing.

Wyatt Armstrong, Committee Clerk

January 10, 2025

1/10/25

Run
1 of 13

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

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

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

40-18.1-02. Jurisdiction.

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

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

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

c. A domestic violence offense

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

40-18.1-03. Fitness to proceed.

1. ~~When~~ If reason to doubt a defendant's fitness to proceed exists, is in question as defined under section 12.1-04-04, the case must be:

a. Transferred to the district court for evaluation; or

b. Dismissed on motion by the prosecutor.

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

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

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

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

40-18.1-04. Criminal responsibility.

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

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

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

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

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

1 **40-18.1-07. Vacancy in office of municipal judge - Disqualification - Temporary**
2 **absence of municipal judge.**

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

12 **40-18.1-08. Clerk of municipal court.**

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

23 **40-18.1-09. City prosecutor.**

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

28 **40-18.1-10. Change of venue - Reliable electronic means.**

- 29 1. A municipal judge shall consider the following factors when determining whether to
30 change the venue of a proceeding under this chapter:
31 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 ~~order the individual to an appropriate licensed addiction treatment~~
22 ~~program for addiction evaluation and require the individual to complete any recommended~~
23 ~~treatment~~ sentence the defendant in accordance with that section.

24 **40-18.1-17. Sentencing alternatives - Suspension of sentence or imposition of**
25 **sentence.**

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

1 or restriction or for a violation of section 39-08-01 or equivalent ordinance if the suspension of
2 sentence or suspension of the imposition of sentence is prohibited under section 39-06-17 or
3 39-06-42 or chapter 39-08.

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

- 6 1. A defendant may ~~file a petition~~request in writing to transfer the case to district court
7 and to exercise the defendant's right to a jury trial within twenty-eight days after
8 arraignment. If the ~~petition~~request is filed within twenty-eight days after the
9 arraignment, the judge shall grant the ~~petition~~request.
- 10 2. If the defendant waives a jury trial after a transfer to district court, the district court
11 shall remand the matter to the municipal court for disposition and sentencing if the
12 parties agree to a remand.
- 13 3. Unless remanded to the municipal court by agreement of the parties, the district court
14 retains jurisdiction for sentencing and enforcement.
- 15 4. The city shall provide a prosecuting attorney and, in the case of an indigent defendant,
16 a defense attorney. The city may contract with the county, state, or any person for the
17 prosecution or defense services.
- 18 5. The city, county, and state may agree to a division of any fees, fines, costs, forfeitures,
19 and any other monetary consideration collected from cases transferred under this
20 section, which must be paid to the city general fund and the county treasury and the
21 state general fund at least once each quarter. At the time of payment, the clerk of
22 district court shall account under oath to the city auditor, county treasurer, and state
23 treasurer for all money collected. In the contract, the city, county, and state may agree
24 to a division of expenses, including jury and witness expenses, related to cases
25 transferred under this section. In the absence of a contract, all fees, fines, costs,
26 forfeitures, and any other monetary consideration collected from transferred cases
27 must be deposited in the state general fund.

28 **40-18.1-19. Appeals from determinations of municipal judge.**

- 29 1. An appeal may be taken to the district court from a judgment of conviction or order
30 deferring imposition of sentence in a municipal court in accordance with the North
31 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 ~~or cost~~, the municipal judge may order ~~an authenticated~~ 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

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

**REPORT OF STANDING COMMITTEE
HB 1032**

Political Subdivisions Committee (Rep. Longmuir, Chairman) recommends **AMENDMENTS** ([25.0279.02001](#)) and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1032 was placed on the Sixth order on the calendar.

2025 SENATE JUDICIARY

HB 1032

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1032
2/17/2025

Relating to ordinance violations and municipal judges.
--

3:00 p.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

Discussion Topics:

- Municipal court jurisdiction
- Indigent defense representation
- Prosecutor presence requirements
- Fitness to proceed standards
- Court of record status

3:00 p.m. Sarah Behrens, Staff Attorney of State Court Administrator's Office, submitted testimony in favor #37906 and #37839.

3:27 p.m. Stephanie Engebretson, Deputy Director and Attorney of NDLC, submitted testimony in favor #37773.

3:34 p.m. Trent Barkus, West Fargo Judge of Municipal Judges Associations, submitted testimony in favor #37877.

3:40 p.m. Jaclyn Hall, Executive Director of the ND Association for Justice, testified in opposition and submitted testimony #37757.

4:08 p.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk



North Dakota Association for Justice
 PO Box 365
 Mandan, ND 58554
The Trial Lawyers of North Dakota

Jaclyn Hall, Executive Director
 jaclyn@ndaj.org

Madam Chair Larson and members of the Senate Judiciary Committee, my name is Jaci Hall, Executive Director of the North Dakota Association for Justice. I am here today opposed to H1032 as it was amended in the House.

HB1032 is the result of an interim study on Municipal Courts. While we believe the bill will provide clarity for the courts, we have some concerns.

1. **Court of Record** – currently under this bill, Municipal Courts are not a court of record. Line 8 page 3 explicitly states this. This poses a problem because these recordings are beneficial to review decisions and be able to make changes if needed.
2. **Judges are not required to be a licensed attorney.** So, your defense counsel and prosecutor are licensed attorneys, but your judge is not required to be in smaller communities. This also means that when you are not licensed, you do not adhere to the ethical responsibilities attorneys are held to. Where else can you make decisions that impact someone's future and not be law trained.
3. **There is no ability to appeal a decision by municipal court.** This can pose a problem, especially when you are not recording the hearing.
4. **Municipal courts in smaller communities do not use Odessey,** they simply send their decisions and submit information to DOT when they have time. This is a huge issue when second, third and fourth offenses require additional penalties, and they have not been recorded. I have heard stories of waiting 30 – 60 days to submit decisions. These impact DOT decisions and judicial decisions for repeat offenders.

Municipal, District and the Supreme Court all serve a purpose. To not utilize the technology advances that the state has invested since COVID in courthouses all over the state or to hold our Judges to the highest ethical standard is wrong.

If we are planning to make substantial changes to the Municipal Court, we need to set them up for success and support changes that will make their jobs easier and support our judicial system in the future. We cannot hold them back.

I understand the cost that may be associated with some of these requests, but I believe that these courts can work together to support each other.



North Dakota Association for Justice

PO Box 365

Mandan, ND 58554

The Trial Lawyers of North Dakota

Jaclyn Hall, Executive Director

jaclyn@ndaj.org

Many systems can use technology to support other localities and share licensed attorneys.

Twelve years ago, this body made changes to ALJs and required them to be licensed attorneys. They understood some of the current Administrative Law Judges were not lawyers and grandfathered them in, slowly replacing them on the bench. This process worked well and we ask you to also consider this as a way to replace sitting unlicensed Judges with those that are licensed attorneys.

We also hear about how busy District court is. Perhaps a study to increase the responsibility of licensed attorneys who preside over the Municipal Court would alleviate these concerns and reduce the backlog.

Finally, we talk a lot about rural attorneys and supporting attorneys who want to work in smaller communities. The opportunity for these attorneys to become a municipal judge in one or two locations would support these efforts.

Our association members practice in these courts. We believe they serve a purpose, but we are asking the committee to not go halfway – support these courts into the future. Please consider these changes before you send this bill to the floor.



February 17, 2025

Senate Judiciary Committee

HB 1032

Senator Diane Larson, Chair

For the record, I am Stephanie Dassinger Engebretson. I am appearing on behalf of the North Dakota League of Cities, in support of HB 1032. I am the deputy director and attorney for the North Dakota League of Cities.

HB 1032 is the result of an interim study of municipal courts. The study sought to clarify several sections in the Century Code related to municipal courts and is the result of collaboration between the Interim Legislative Judiciary Committee, the North Dakota Supreme Court, the Municipal Judges Association, and the North Dakota League of Cities.

The bill repeals NDCC ch. 40-18 and replaces it with a new chapter NDCC ch. 40-18.1. A lot of the requirements related to municipal courts stay the same under the bill; however, there are a few changes I want to highlight for the committee.

The bill creates jurisdiction in district court for violations of municipal ordinances in cities under 5,000 when they do not have a municipal court. We have had instances where smaller cities have had challenges setting up a municipal court or do not have one and need a place to resolve a municipal ordinance violation.

The bill adds a process for the municipal court to refer a class B misdemeanor to district court when a fitness to proceed issue arises. Under the current law, the only option is usually for the court to dismiss a class B misdemeanor. It also adds a section to allow for transferring a case to district court for issues surrounding criminal responsibility.

The bill provides that in cities with a population over 5,000, the city can provide by ordinance for a judge not being required to be a resident of the city. Currently, in cities over 5,000 population, the judge must be a resident of the city.

The bill provides that a city prosecutor must be present for all contested hearings and proceedings involving a class B misdemeanor in municipal court. Currently, there is a court rule suggesting that the city has a prosecutor present.

Finally, the bill provides authority for the North Dakota Judicial Conduct Commission to order a non-law trained judge not to hear cases for failure to comply with the rules. This authority is lacking in the current version of NDCC ch. 40-18.

The North Dakota League of Cities respectfully requests a Do Pass recommendation on HB 1032.

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.

**TESTIMONY OF
JUDGE TRENT N. BARKUS
BEFORE THE 68th LEGISLATIVE
SESSION SENATE JUDICIARY
COMMITTEE FEBRUARY 17, 2025
IN SUPPORT OF H.B. 1032**

Chairwoman Larsen, members of the Senate Judiciary Committee, my name is Trent Barkus, I'm the Municipal Judge in West Fargo, an alternate Judge in Fargo and a Board Member of the Municipal Judge's Association. I am here today to testify in support of House Bill 1032.

The Municipal Courts in North Dakota play a vital role in our communities and legal system. This bill was a collaboration with the Supreme Court, League of Cities and the Municipal Judges. The bill allows not only cities flexibility with how they run the courts but also modernizes Chapter 40-18 with the first update since at least the 1990s.

I ask for your favorable support of the bill and am pleased to stand for any questions you may have. Thank you.

North Dakota Municipal Court Fact Sheet – January 2025

Total Courts: 73

Total Judges (not alternates) – 54

Total Law-Trained Judges – 21 (39%)

Total Alternates (not a judge for another city) – 10 (8 law-trained)

Population 2020 US Census

- Courts in cities with under 100 – 3
- Courts in cities under 1,000 but more than 100 – 38
- Courts in cities over 1,000 but less than 5,000 – 20
- Courts in cities over 5,000 - 12

Smallest city with a court – Spring Book - population 37

Largest city without a court – Watford City – population 6,207

Additional Notes

- There are 355 incorporated cities in North Dakota, 73 have municipal courts (about 20%).
- Total number of municipal contracts with district court for all Cases (NDCC 40-18-06.2): 94

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1032
2/18/2025

Relating to ordinance violations and municipal judges.
--

9:31 a.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

Discussion Topics:

- Municipal court jurisdiction
- Law training requirements for judges
- Recording procedures in municipal courts
- Implementation timelines for judicial changes

9:31 a.m. Senator Myrdal updated committee on interim committee discussion on HB 1032.

9:45 a.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1032
3/10/2025

Relating to ordinance violations and municipal judges.
--

11:06 a.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

Discussion Topics:

- Municipal court recording requirements
- Supreme Court study proposal
- Population-based city categorization

11:06 a.m. Senator Paulson introduced proposed amendment provided by Sarah Behrens and submitted testimony #40029.

11:16 a.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk

PROPOSED AMENDMENTS TO
ENGROSSED HOUSE BILL NO. 1032

25.0279.03000

Sixty-ninth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

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; and to provide for
7 a report.

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

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

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

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

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

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

18 1. Lawyers provided to represent indigent persons must be compensated at a
19 reasonable rate to be determined by the commission on legal counsel for indigents.
20 Expenses necessary for the adequate defense of an indigent person prosecuted in

district court, other than for a violation of a home rule county's ordinance, when approved by the commission, must be paid by the state. Expenses necessary for the 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.

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

26 **40-18.1-02. Jurisdiction.**

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

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

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

13 c. A domestic violence offense

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

18 **40-18.1-03. Fitness to proceed.**

19 1. If reason to doubt a defendant's fitness to proceed exists, as defined under section
20 12.1-04-04, the case must be:

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

22 b. Dismissed on motion by the prosecutor.

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

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

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

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

40-18.1-04. Criminal responsibility.

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

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

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

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

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

1 **40-18.1-07. Vacancy in office of municipal judge - Disqualification - Temporary**

2 **absence of municipal judge.**

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

12 **40-18.1-08. Clerk of municipal court.**

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

23 **40-18.1-09. City prosecutor.**

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

28 **40-18.1-10. Change of venue - Reliable electronic means.**

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

c. Available facilities.

d. Administration of justice.

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

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

40-18.1-11. Costs and fees.

1. A municipal court:

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

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

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

d. Shall

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

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

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

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

An action for a violation of an ordinance is initiated by a uniform complaint under section 29-05-31 or a complaint in compliance with the North Dakota Rules of Criminal Procedure. If there is probable cause to believe a criminal offense has been committed by the individual charged, an arrest warrant must be issued, except a municipal judge may issue a summons

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

4 **40-18.1-14. Commitment for nonpayment of fines or costs.**

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

12 **40-18.1-15. Fines, fees, and forfeitures for violation of ordinances paid into city**
13 **general fund.**

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

17 **40-18.1-16. Diagnosis and treatment of individuals convicted of driving while under**
18 **the influence.**

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

21 **40-18.1-17. Sentencing alternatives - Suspension of sentence or imposition of**
22 **sentence.**

23 Subject to section 40-05-06, a municipal judge may use the sentencing alternatives
24 provided under section 12.1-32-02 and may suspend any sentence the judge imposes or defer
25 the imposition of any sentence due to the good behavior of an individual adjudged to have
26 committed an offense, or for other reasonable cause, under subsection 3 or 4 of section
27 12.1-32-02, except a municipal judge may not suspend a sentence or the imposition of
28 sentence for driving a motor vehicle in violation of an operator's license suspension, revocation,
29 or restriction or for a violation of section 39-08-01 or equivalent ordinance if the suspension of
30 sentence or suspension of the imposition of sentence is prohibited under section 39-06-17 or
31 39-06-42 or chapter 39-08.

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

1. A defendant may request in writing to transfer the case to district court and to exercise the defendant's right to a jury trial within twenty-eight days after arraignment. If the request is filed within twenty-eight days after the arraignment, the judge shall grant the request.
2. If the defendant waives a jury trial after a transfer to district court, the district court shall remand the matter to the municipal court for disposition and sentencing if the parties agree to a remand.
3. Unless remanded to the municipal court by agreement of the parties, the district court retains jurisdiction for sentencing and enforcement.
4. The city shall provide a prosecuting attorney and, in the case of an indigent defendant, a defense attorney. The city may contract with the county, state, or any person for the prosecution or defense services.
5. The city, county, and state may agree to a division of any fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred under this section, which must be paid to the city general fund and the county treasury and the state general fund at least once each quarter. At the time of payment, the clerk of district court shall account under oath to the city auditor, county treasurer, and state treasurer for all money collected. In the contract, the city, county, and state may agree to a division of expenses, including jury and witness expenses, related to cases transferred under this section. In the absence of a contract, all fees, fines, costs, forfeitures, and any other monetary consideration collected from transferred cases must be deposited in the state general fund.

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

1. An appeal may be taken to the district court from a judgment of conviction or order deferring imposition of sentence in a municipal court in accordance with the North 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.

1 3. On all appeals from a determination in a municipal court, the district court shall take
2 judicial notice of all of the ordinances of the city.

3 4. A filing fee may not be required in district court for the filing of an appeal from a
4 judgment of conviction for the violation of a city ordinance.

5 5. Expenses necessary for the adequate defense of an indigent individual in an appeal to
6 the district court from a judgment of conviction for the violation of a municipal
7 ordinance, as approved by the presiding district judge, must be paid by the city where
8 the alleged offense took place.

9 6. Unless remanded to the municipal court by agreement of the parties, the district court
10 retains jurisdiction for sentencing and enforcement.

11 **40-18.1-20. Municipal judge may enforce orders and judgments and punish for**
12 **contempt.**

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

24 **40-18.1-21. Judgment for fines, fees, or costs - Procedure.**

25 1. If the judgment imposes a fine or assesses a fee, the municipal judge may order a
26 certified copy of the judgment be filed in the office of the clerk of the district court of
27 any county in the state. The clerk of district court shall treat the municipal court
28 judgment in the same manner as a civil judgment of any district court of any county of
29 the state.

30 2. At the time of filing the judgment with the office of the clerk of district court, the
31 municipal court judge shall order an affidavit providing the name and last-known

mailing address of the defendant and otherwise complying with section 28-20-15 be
filed.

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

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

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

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

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

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

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

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

1. The governing body of a city with a population of fewer than five thousand having a
municipal court may by resolution abolish its municipal court. The jurisdiction of a
municipal court abolished by resolution must be transferred to the district court of the
district in which the city is located.

2. The city auditor shall provide a copy of the resolution abolishing the court to the
presiding judge and clerk of court of the district court for the district in which the city is
located, the state's attorney for the county in which the city is located, and the state

1 court administrator. The resolution must provide the effective date of the transfer of
2 cases, which must be at least ninety days following the date of the resolution.

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

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

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

16 **40-18.1-24. Abolition of municipal court in a city with a population of five thousand or**
17 **more.**

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

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

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

23 c. The state court administrator's office.

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

27 3. At least ten days before the effective date of the transfer, the clerk of the municipal
28 court shall deliver to the clerk of the district court all cases pending action by the
29 district court after the effective date of the transfer.

30 4. On the effective date of the transfer, all proceedings relating to ordinance violations
31 must be within the jurisdiction of the district court. Judgments of courts which cease to
32 exist on the effective date of the agreement continue in effect and the district court

1 may enforce the judgments. Fines, forfeitures, and costs due and unpaid on the
2 effective date of the transfer and those which are subsequently collected on cases
3 pending on the effective date must be collected by the district court and remitted to the
4 city.

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

8 **40-18.1-25. Compliance with rules adopted by the supreme court.**

9 1. The supreme court shall adopt rules governing:

10 a. Municipal court procedure;

11 b. Qualifications and education of municipal judges;

12 c. Qualification and education of municipal clerks;

13 d. Requirements of municipal court facilities; and

14 e. Records to be maintained and reports to be filed by the municipal court.

15 2. Each municipal judge and alternate judge shall comply with the rules established by
16 the supreme court. The city shall reimburse the judge for necessary travel expenses,
17 meals, and lodging relating to compliance with the rules regarding qualifications and
18 education in the same manner as other city officials are reimbursed.

19 3. If a municipal judge or alternate municipal judge fails to fulfill the requirements of the
20 rules established by the supreme court, the judicial conduct commission may order the
21 municipal judge not preside over municipal court proceedings.

22 SECTION 4. **REPEAL.** Sections 40-11-10, 40-11-11, 40-11-12, and 40-11-13 and chapter
23 40-18 of the North Dakota Century Code are repealed.

24 **SECTION 5. SUPREME COURT STUDY – COURTS OF RECORD – REPORT TO**
25 **LEGISLATIVE MANAGEMENT.** During the 2025-26 interim, the supreme court, in consultation
26 with the league of cities, shall study municipal courts becoming courts of record. The supreme
27 court shall report its findings and recommendations, together with any legislation required to
28 implement the statutory change to require all municipal courts to be courts of record, to the
29 legislative management by June 1, 2026.

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

HB 1032
4/2/2025

Relating to ordinance violations and municipal judges.
--

9:41 a.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

Discussion Topics:

- Ethical standards for municipal judges
- Appeals process for municipal courts

9:42 a.m. Senator Cory introduced proposed amendment LC# 25.0279.03002 and submitted testimony #44558.

9:43 a.m. Sara Behrens, Staff Attorney, ND Supreme Court, testified as neutral and answered committee amendment questions.

9:58 a.m. Senator Cory moved amendment LC# 25.0279.03002.

9:58 a.m. Senator Luick seconded.

10:02 a.m. Sara Behrens, Staff Attorney, ND Supreme Court, testified as neutral and helped committee with wording of amendment, page 13 line 10 and page 14 line 7 replace ethical standards with judicial conduct in both places.

10:04 a.m. Senator Cory withdrew motion.

10:04 a.m. Senator Luick seconded.

10:04 a.m. Senator Cory moved amendment LC# 25.0279.03002 and further amend page 13 line 10 and 14 line 7 with striking ethical standards and replacing with judicial conduct.

10:05 a.m. Senator Luick seconded.

10:07 a.m. Voice Vote - Motion Passed.

10:07 a.m. Senator Myrdal moved a Do Pass as amended.

10:07 a.m. Senator Castaneda seconded the motion.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Ryan Braunberger	Y
Senator Jose L. Casteneda	Y
Senator Claire Cory	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion Passed 7-0-0.

10:07 a.m. Senator Cory will carry the bill.

10:08 a.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk

April 2, 2025

CO
4/2/25
10/14

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
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.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

- a. With a population of fewer than five thousand in which there is not a municipal
court or municipal judge under chapter 40-18.1.
- b. That has entered an agreement under section ~~40-18.1-22~~40-18.1-23 or
~~40-18.1-24~~40-18.1-25.

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

1. Lawyers provided to represent indigent persons must be compensated at a
reasonable rate to be determined by the commission on legal counsel for indigents.
Expenses necessary for the adequate defense of an indigent person prosecuted in

district court, other than for a violation of a home rule county's ordinance, when approved by the commission, must be paid by the state. Expenses necessary for the 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, or 40-18.1-25, 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 or 40-18.1-20, 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:
 - a. Facilities for the use of the municipal court to conduct trials, hearings, and other necessary duties; and
 - b. Necessary supplies and technology and sufficient clerical and nonjudicial support personnel to assist the municipal judge.
4. Municipal court must be held at the time and place designated by the municipal judge. The court schedule must be posted publicly by filing the notice with the city auditor's office and posting the notice on the city's website if the city has a website.
5. Two or more cities, by resolution, may enter an agreement establishing a single joint municipal court. A copy of the agreement must be filed with the state court administrator. The agreement must include the name of the joint municipal court. As used in this chapter, "municipal court" includes a joint municipal court.
6. Two or more cities, by resolution, may enter an agreement to provide jointly for courtrooms, chambers, equipment, supplies, and staff for municipal courts and agree to elect judges without establishing a joint municipal court. A copy of the agreement must be filed with the state court administrator. If municipal courts share facilities and resources in this manner, the identities of the individual courts must be expressed in the case caption.
7. An agreement under subsection 5 or 6 may be terminated in the manner provided in the agreement. If the agreement does not include a provision for termination, the agreement may be terminated by any party upon the provision of not fewer than thirty days notice to the governing bodies.
8. ~~The municipal court is not a court of record~~Beginning July 1, 2026, the municipal court is a court of record.

40-18.1-02. Jurisdiction.

1. The municipal court has jurisdiction to hear, try, and determine offenses against the ordinances of any city served by the court.
2. Notwithstanding any other provision of law, the municipal court does not have jurisdiction to hear, try, and determine:

- 1 a. An offense that would be a violation of section 39-08-01 or equivalent ordinance,
2 if the individual charged with the offense has twice previously been convicted of a
3 violation of section 39-08-01 or equivalent ordinance within the seven years
4 preceding the commission of the offense charged or if the individual charged with
5 the offense has three times previously been convicted of a violation of section
6 39-08-01 or equivalent ordinance within the fifteen years preceding the
7 commission of the offense charged. If the offense is charged in the municipal
8 court and the municipal judge has notice of a violation of section 39-08-01 or
9 equivalent ordinance twice within the seven years, or three times within the
10 fifteen years, preceding the commission of the offense charged, the municipal
11 judge shall dismiss the charge, without prejudice, and refer the matter to the
12 state's attorney of the county in which the municipal court is located.
- 13 b. An offense that would be a violation of section 39-08-01 or equivalent ordinance if
14 the judge is not licensed to practice law in this state.
- 15 c. A domestic violence offense.
- 16 d. A criminal offense, including criminal traffic offenses, against a juvenile, except a
17 municipal court may hear, try, and determine noncriminal offenses against a
18 juvenile if the juvenile is not subject to the exclusive jurisdiction of the juvenile
19 court under chapter 27-20.2.

20 **40-18.1-03. Fitness to proceed.**

- 21 1. If reason to doubt a defendant's fitness to proceed exists, as defined under section
22 12.1-04-04, the case must be:
 - 23 a. Transferred to the district court for evaluation; or
 - 24 b. Dismissed on motion by the prosecutor.
- 25 2. The district court shall order the defendant to undergo a fitness to proceed evaluation
26 under chapter 12.1-04. If the defendant is found fit to proceed, the case must be
27 remanded to the municipal court for further proceedings.
- 28 3. The time to petition to transfer the matter to district court under section 40-18.1-18 is
29 suspended pending determination of the defendant's fitness to proceed.
- 30 4. If the defendant is found to lack fitness to proceed, the case must be dismissed.

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

40-18.1-04. Criminal responsibility.

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

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

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

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

A party to a proceeding pending in a municipal court may obtain a change of judge under 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.
 - b. Judicial efficiency.
 - c. Available facilities.
 - d. Administration of justice.
2. A municipal judge may not change the venue of a proceeding if a party to the proceeding objects to the change.
3. A municipal judge may use contemporaneous audio or audiovisual transmission by reliable electronic means in accordance with rule 52 of the North Dakota Supreme Court Administrative Rules. A municipal judge who presides over a proceeding through contemporaneous audio or audiovisual transmission by reliable electronic means is equivalent to a municipal judge who is physically present at the proceeding.

40-18.1-11. Costs and fees.

1. A municipal court:
 - a. May not assess costs or fees against any individual except as specifically provided in this chapter.
 - b. May assess a fee under subsection 2 of section 40-05-06.
 - c. May assess a court administration fee and a community service supervision fee in an amount not to exceed the amounts allowed under section 29-26-22.
 - e.d. Shall assess the crime victim and witness program fee under section 27-01-10.
2. The judgment must itemize the fines and fees assessed.

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

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

80fly

1 **40-18.1-13. Summons to issue on violation of ordinance - When warrant of arrest to**
2 **issue.**

3 An action for a violation of an ordinance is initiated by a uniform complaint under section
4 29-05-31 or a complaint in compliance with the North Dakota Rules of Criminal Procedure. If
5 there is probable cause to believe a criminal offense has been committed by the individual
6 charged, an arrest warrant must be issued, except a municipal judge may issue a summons
7 instead of an arrest warrant if the municipal judge has reason to believe the individual charged
8 will appear in response to the summons. An individual arrested under a warrant must be taken
9 without unnecessary delay before the municipal judge to be tried for the alleged offense.

10 **40-18.1-14. Commitment for nonpayment of fines or costs.**

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

18 **40-18.1-15. Fines, fees, and forfeitures for violation of ordinances paid into city**
19 **general fund.**

20 All fines, fees, penalties, and forfeitures collected for a violation of a city ordinance,
21 including those collected as a result of a judgment of a district court rendered under section
22 40-18.1-18, must be paid into the city's general fund.

23 **40-18.1-16. Diagnosis and treatment of individuals convicted of driving while under**
24 **the influence.**

25 If an individual is convicted under an ordinance equivalent to an offense under section
26 39-08-01, the court shall sentence the defendant in accordance with that section.

27 **40-18.1-17. Sentencing alternatives - Suspension of sentence or imposition of**
28 **sentence.**

29 Subject to section 40-05-06, a municipal judge may use the sentencing alternatives
30 provided under section 12.1-32-02 and may suspend any sentence the judge imposes or defer
31 the imposition of any sentence due to the good behavior of an individual adjudged to have

1 committed an offense, or for other reasonable cause, under subsection 3 or 4 of section
2 12.1-32-02, except a municipal judge may not suspend a sentence or the imposition of
3 sentence for driving a motor vehicle in violation of an operator's license suspension, revocation,
4 or restriction or for a violation of section 39-08-01 or equivalent ordinance if the suspension of
5 sentence or suspension of the imposition of sentence is prohibited under section 39-06-17 or
6 39-06-42 or chapter 39-08.

7 **40-18.1-18. Transfer to district court - Expenses of prosecution - Division of funds**
8 **and expenses among city, county, and state.**

- 9 1. A defendant may request in writing to transfer the case to district court and to exercise
10 the defendant's right to a jury trial within twenty-eight days after arraignment. If the
11 request is filed within twenty-eight days after the arraignment, the judge shall grant the
12 request.
- 13 2. If the defendant waives a jury trial after a transfer to district court, the district court
14 shall remand the matter to the municipal court for disposition and sentencing if the
15 parties agree to a remand.
- 16 3. Unless remanded to the municipal court by agreement of the parties, the district court
17 retains jurisdiction for sentencing and enforcement.
- 18 4. The city shall provide a prosecuting attorney and, in the case of an indigent defendant,
19 a defense attorney. The city may contract with the county, state, or any person for the
20 prosecution or defense services.
- 21 5. The city, county, and state may agree to a division of any fees, fines, costs, forfeitures,
22 and any other monetary consideration collected from cases transferred under this
23 section, which must be paid to the city general fund and the county treasury and the
24 state general fund at least once each quarter. At the time of payment, the clerk of
25 district court shall account under oath to the city auditor, county treasurer, and state
26 treasurer for all money collected. In the contract, the city, county, and state may agree
27 to a division of expenses, including jury and witness expenses, related to cases
28 transferred under this section. In the absence of a contract, all fees, fines, costs,
29 forfeitures, and any other monetary consideration collected from transferred cases
30 must be deposited in the state general fund.

10 OFF

40-18.1-19. Appeals from determinations of municipal judge not in courts of record.

1. AnFor a case filed before July 1, 2026, an appeal may be taken to the district court from a judgment of conviction or order deferring imposition of sentence in a municipal court in accordance with the North 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. Appeals from determinations of municipal judge in courts of record.

1. For a case filed on or after July 1, 2026, an appeal may be taken to the district court from a judgment of conviction or order deferring imposition of sentence in a municipal court in accordance with the North Dakota Rules of Criminal Procedure.
2. An appeal from a municipal court of record must originate from the file, record, recording, transcript, or evidence from the municipal court.
3. The district court may affirm, reverse, or amend any appeal order or judgment and may direct the proper order or judgment be entered or direct a new trial or further proceeding be had in the court from which the appeal was taken.

40-18.1-2040-18.1-21. 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

1 an act or omission constituting a contempt in a municipal court is not committed in the presence
2 of the municipal judge, an affidavit alleging the facts may be filed and a warrant of arrest may be
3 issued on which the individual accused may be arrested and brought before the municipal judge
4 immediately. The individual must be given a reasonable opportunity to employ counsel and
5 defend against the alleged contempt. After hearing the allegations and proof, the municipal
6 judge may discharge the individual or adjudge the individual guilty and may punish by fine,
7 imprisonment, or both. The fine in any case may not exceed one thousand five hundred dollars
8 and the imprisonment may not exceed thirty days.

9 **40-18.1-2140-18.1-22. Judgment for fines, fees, or costs - Procedure.**

- 10 1. If the judgment imposes a fine or assesses a fee, the municipal judge may order a
11 certified copy of the judgment be filed in the office of the clerk of the district court of
12 any county in the state. The clerk of district court shall treat the municipal court
13 judgment in the same manner as a civil judgment of any district court of any county of
14 the state.
- 15 2. At the time of filing the judgment with the office of the clerk of district court, the
16 municipal court judge shall order an affidavit providing the name and last-known
17 mailing address of the defendant and otherwise complying with section 28-20-15 be
18 filed.
- 19 3. Upon the filing of the judgment and affidavit, the clerk of municipal court shall mail
20 notice of the filing of the municipal judgment to the defendant at the defendant's last-
21 known address and file proof of mailing with the district court. The notice must include
22 the name and mailing address of the municipal court.
- 23 4. An execution of other process for enforcement of a municipal court judgment filed
24 under this section may not be issued until ten days after the date the judgment is filed.
- 25 5. If the defendant shows the district court of any county that an appeal from the
26 judgment is pending or will be taken, the court shall stay enforcement of the municipal
27 court judgment until the appeal is concluded or the time for appeal expires.
- 28 6. The municipal judge shall order the defendant to pay a filing fee of ten dollars to the
29 clerk of district court.

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

4 **40-18.1-2240-18.1-23. Transfer of municipal ordinance cases to district court.**

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

11 **40-18.1-2340-18.1-24. Abolition of municipal court in a city with a population of fewer**
12 **than five thousand.**

- 13 1. The governing body of a city with a population of fewer than five thousand having a
14 municipal court may by resolution abolish its municipal court. The jurisdiction of a
15 municipal court abolished by resolution must be transferred to the district court of the
16 district in which the city is located.
- 17 2. The city auditor shall provide a copy of the resolution abolishing the court to the
18 presiding judge and clerk of court of the district court for the district in which the city is
19 located, the state's attorney for the county in which the city is located, and the state
20 court administrator. The resolution must provide the effective date of the transfer of
21 cases, which must be at least ninety days following the date of the resolution.
- 22 3. At least ten days before the effective date of the transfer, the clerk of the municipal
23 court shall deliver to the clerk of the district court all cases pending action by the
24 district court after the effective date of the resolution.
- 25 4. On the effective date of transfer, all proceedings relating to ordinance violations must
26 be within the jurisdiction of the district court. Judgments of courts which cease to exist
27 on the effective date of the resolution continue in effect and the district court may
28 enforce the judgments. Fines, forfeitures, and costs due and unpaid on the effective
29 date of the transfer and those which are subsequently collected on cases pending on
30 the effective date of the transfer must be collected by the district court and remitted to
31 the city.

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

4 **40-18.1-2440-18.1-25. Abolition of municipal court in a city with a population of five**
5 **thousand or more.**

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

- 9 a. The governing body of the county in which the municipal court is located;
10 b. The presiding judge of the district in which the municipal court is located; and
11 c. The state court administrator's office.

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

15 3. At least ten days before the effective date of the transfer, the clerk of the municipal
16 court shall deliver to the clerk of the district court all cases pending action by the
17 district court after the effective date of the transfer.

18 4. On the effective date of the transfer, all proceedings relating to ordinance violations
19 must be within the jurisdiction of the district court. Judgments of courts which cease to
20 exist on the effective date of the agreement continue in effect and the district court
21 may enforce the judgments. Fines, forfeitures, and costs due and unpaid on the
22 effective date of the transfer and those which are subsequently collected on cases
23 pending on the effective date must be collected by the district court and remitted to the
24 city.

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

28 **40-18.1-2540-18.1-26. Compliance with rules adopted by the supreme court.**

29 1. The supreme court shall adopt rules governing:

- 30 a. Municipal court procedure;

1 b. Qualifications, ~~ethical standards~~judicial conduct, and education of municipal
2 judges;

3 c. Qualification and education of municipal clerks;

4 d. Requirements of municipal court facilities; and

5 e. Records to be maintained and reports to be filed by the municipal court.

6 2. Each municipal judge and alternate judge shall comply with the rules established by
7 the supreme court. The city shall reimburse the judge for necessary travel expenses,
8 meals, and lodging relating to compliance with the rules regarding qualifications,
9 ~~ethical standards~~judicial conduct, and education in the same manner as other city
10 officials are reimbursed.

11 3. If a municipal judge or alternate municipal judge fails to fulfill the requirements of the
12 rules established by the supreme court, the judicial conduct commission may order the
13 municipal judge not preside over municipal court proceedings.

14 **SECTION 4. REPEAL.** Sections 40-11-10, 40-11-11, 40-11-12, and 40-11-13 and chapter
15 40-18 of the North Dakota Century Code are repealed.

**REPORT OF STANDING COMMITTEE
ENGROSSED HB 1032**

Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS** ([25.0279.03003](#)) and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). Engrossed HB 1032 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

25.0279.03002
Title.

Prepared by the Legislative Council
staff for Senator Cory
April 1, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO 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~~40-18.1-23 or
15 ~~40-18.1-24~~40-18.1-25.

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

18 1. Lawyers provided to represent indigent persons must be compensated at a
19 reasonable rate to be determined by the commission on legal counsel for indigents.
20 Expenses necessary for the adequate defense of an indigent person prosecuted in

district court, other than for a violation of a home rule county's ordinance, when approved by the commission, must be paid by the state. Expenses necessary for the 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 ~~infor 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 40-18-15.140-18.1-18, ~~40-18.1-22,~~ 40-18.1-23, or 40-18.1-24 or 40-18.1-25,~~ in any appeal taken to district court from a judgment of conviction in municipal court pursuant to under section ~~40-18-1940-18.1-19 or 40-18.1-20,~~ 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.

- 1 2. The governing body shall, by ordinance, provide for the election of at least one
2 full-time or part-time judge.
- 3 3. A city that establishes a municipal court shall provide:
- 4 a. Facilities for the use of the municipal court to conduct trials, hearings, and other
5 necessary duties; and
- 6 b. Necessary supplies and technology and sufficient clerical and nonjudicial support
7 personnel to assist the municipal judge.
- 8 4. Municipal court must be held at the time and place designated by the municipal judge.
9 The court schedule must be posted publicly by filing the notice with the city auditor's
10 office and posting the notice on the city's website if the city has a website.
- 11 5. Two or more cities, by resolution, may enter an agreement establishing a single joint
12 municipal court. A copy of the agreement must be filed with the state court
13 administrator. The agreement must include the name of the joint municipal court. As
14 used in this chapter, "municipal court" includes a joint municipal court.
- 15 6. Two or more cities, by resolution, may enter an agreement to provide jointly for
16 courtrooms, chambers, equipment, supplies, and staff for municipal courts and agree
17 to elect judges without establishing a joint municipal court. A copy of the agreement
18 must be filed with the state court administrator. If municipal courts share facilities and
19 resources in this manner, the identities of the individual courts must be expressed in
20 the case caption.
- 21 7. An agreement under subsection 5 or 6 may be terminated in the manner provided in
22 the agreement. If the agreement does not include a provision for termination, the
23 agreement may be terminated by any party upon the provision of not fewer than thirty
24 days notice to the governing bodies.
- 25 8. ~~The municipal court is not a court of record~~Beginning July 1, 2026, the municipal court
26 is a court of record.

27 **40-18.1-02. Jurisdiction.**

- 28 1. The municipal court has jurisdiction to hear, try, and determine offenses against the
29 ordinances of any city served by the court.
- 30 2. Notwithstanding any other provision of law, the municipal court does not have
31 jurisdiction to hear, try, and determine:

- a. An offense that would be a violation of section 39-08-01 or equivalent ordinance, if the individual charged with the offense has twice previously been convicted of a violation of section 39-08-01 or equivalent ordinance within the seven years preceding the commission of the offense charged or if the individual charged with the offense has three times previously been convicted of a violation of section 39-08-01 or equivalent ordinance within the fifteen years preceding the commission of the offense charged. If the offense is charged in the municipal court and the municipal judge has notice of a violation of section 39-08-01 or equivalent ordinance twice within the seven years, or three times within the fifteen years, preceding the commission of the offense charged, the municipal judge shall dismiss the charge, without prejudice, and refer the matter to the state's attorney of the county in which the municipal court is located.
- b. An offense that would be a violation of section 39-08-01 or equivalent ordinance if the judge is not licensed to practice law in this state.
- c. A domestic violence offense
- d. A criminal offense, including criminal traffic offenses, against a juvenile, except a municipal court may hear, try, and determine noncriminal offenses against a juvenile if the juvenile is not subject to the exclusive jurisdiction of the juvenile court under chapter 27-20.2.

40-18.1-03. Fitness to proceed.

1. If reason to doubt a defendant's fitness to proceed exists, as defined under section 12.1-04-04, the case must be:
 - a. Transferred to the district court for evaluation; or
 - b. Dismissed on motion by the prosecutor.
2. The district court shall order the defendant to undergo a fitness to proceed evaluation under chapter 12.1-04. If the defendant is found fit to proceed, the case must be remanded to the municipal court for further proceedings.
3. The time to petition to transfer the matter to district court under section 40-18.1-18 is suspended pending determination of the defendant's fitness to proceed.
4. If the defendant is found to lack fitness to proceed, the case must be dismissed.

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

4 **40-18.1-04. Criminal responsibility.**

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

17 **40-18.1-05. Election of municipal judge - Qualifications.**

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

1 **40-18.1-06. Demand for change of judge.**

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

4 **40-18.1-07. Vacancy in office of municipal judge - Disqualification - Temporary**
5 **absence of municipal judge.**

6 1. If a vacancy exists in the office of municipal judge by death, resignation, or otherwise,
7 the governing body of the city shall appoint an individual to fill the vacancy.

8 2. The governing body may appoint alternate municipal judges to serve when a municipal
9 judge is unable to serve due to temporary absence, illness, disqualification, or
10 disability. The alternate judges must be compensated at a rate set by the governing
11 body.

12 3. If the alternate municipal judges also are disqualified or unavailable, the chief justice
13 may appoint a district court judge to a temporary assignment as a municipal court
14 judge for the purpose of presiding over the case.

15 **40-18.1-08. Clerk of municipal court.**

16 1. The governing body of a city with a municipal court may provide for the office of clerk
17 of the municipal court, which may include deputy clerks of municipal court. The
18 governing body of the city shall appoint the clerk and deputy clerk, with the consent of
19 the municipal judge. The governing body shall fix the salary of the municipal clerk and
20 deputy clerk.

21 2. The clerk and deputy clerk of the municipal court shall issue all process of the court,
22 administer oaths, file and preserve all papers, docket cases, set trials, and perform
23 other acts necessary to carry out the duties and responsibilities of the court. The clerk
24 shall receive, account for, and pay on a monthly basis to the city general fund all fines
25 and forfeited bonds paid into the court.

26 **40-18.1-09. City prosecutor.**

27 1. A prosecutor licensed to practice law in this state must be present for all contested
28 hearings and proceedings involving a class B misdemeanor in a municipal court.

29 2. The city shall pay the compensation of the prosecutor and any necessary expenses
30 incurred in prosecuting a violation of a city ordinance.

1 **40-18.1-10. Change of venue - Reliable electronic means.**

2 1. A municipal judge shall consider the following factors when determining whether to
3 change the venue of a proceeding under this chapter:

4 a. Convenience to the parties and witnesses.

5 b. Judicial efficiency.

6 c. Available facilities.

7 d. Administration of justice.

8 2. A municipal judge may not change the venue of a proceeding if a party to the
9 proceeding objects to the change.

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

15 **40-18.1-11. Costs and fees.**

16 1. A municipal court:

17 a. May not assess costs or fees against any individual except as specifically
18 provided in this chapter.

19 b. May assess a fee under subsection 2 of section 40-05-06.

20 c. May assess a court administration fee and a community service supervision fee
21 in an amount not to exceed the amounts allowed under section 29-26-22.

22 ~~e.d.~~ Shall assess the crime victim and witness program fee under section 27-01-10.

23 2. The judgment must itemize the fines and fees assessed.

24 **40-18.1-12. Action for violation of ordinance in corporate name - Previous**
25 **prosecution, recovery, or acquittal no defense.**

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

1 **40-18.1-13. Summons to issue on violation of ordinance - When warrant of arrest to**
2 **issue.**

3 An action for a violation of an ordinance is initiated by a uniform complaint under section
4 29-05-31 or a complaint in compliance with the North Dakota Rules of Criminal Procedure. If
5 there is probable cause to believe a criminal offense has been committed by the individual
6 charged, an arrest warrant must be issued, except a municipal judge may issue a summons
7 instead of an arrest warrant if the municipal judge has reason to believe the individual charged
8 will appear in response to the summons. An individual arrested under a warrant must be taken
9 without unnecessary delay before the municipal judge to be tried for the alleged offense.

10 **40-18.1-14. Commitment for nonpayment of fines or costs.**

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

18 **40-18.1-15. Fines, fees, and forfeitures for violation of ordinances paid into city**
19 **general fund.**

20 All fines, fees, penalties, and forfeitures collected for a violation of a city ordinance,
21 including those collected as a result of a judgment of a district court rendered under section
22 40-18.1-18, must be paid into the city's general fund.

23 **40-18.1-16. Diagnosis and treatment of individuals convicted of driving while under**
24 **the influence.**

25 If an individual is convicted under an ordinance equivalent to an offense under section
26 39-08-01, the court shall sentence the defendant in accordance with that section.

27 **40-18.1-17. Sentencing alternatives - Suspension of sentence or imposition of**
28 **sentence.**

29 Subject to section 40-05-06, a municipal judge may use the sentencing alternatives
30 provided under section 12.1-32-02 and may suspend any sentence the judge imposes or defer
31 the imposition of any sentence due to the good behavior of an individual adjudged to have

1 committed an offense, or for other reasonable cause, under subsection 3 or 4 of section
2 12.1-32-02, except a municipal judge may not suspend a sentence or the imposition of
3 sentence for driving a motor vehicle in violation of an operator's license suspension, revocation,
4 or restriction or for a violation of section 39-08-01 or equivalent ordinance if the suspension of
5 sentence or suspension of the imposition of sentence is prohibited under section 39-06-17 or
6 39-06-42 or chapter 39-08.

7 **40-18.1-18. Transfer to district court - Expenses of prosecution - Division of funds**
8 **and expenses among city, county, and state.**

- 9 1. A defendant may request in writing to transfer the case to district court and to exercise
10 the defendant's right to a jury trial within twenty-eight days after arraignment. If the
11 request is filed within twenty-eight days after the arraignment, the judge shall grant the
12 request.
- 13 2. If the defendant waives a jury trial after a transfer to district court, the district court
14 shall remand the matter to the municipal court for disposition and sentencing if the
15 parties agree to a remand.
- 16 3. Unless remanded to the municipal court by agreement of the parties, the district court
17 retains jurisdiction for sentencing and enforcement.
- 18 4. The city shall provide a prosecuting attorney and, in the case of an indigent defendant,
19 a defense attorney. The city may contract with the county, state, or any person for the
20 prosecution or defense services.
- 21 5. The city, county, and state may agree to a division of any fees, fines, costs, forfeitures,
22 and any other monetary consideration collected from cases transferred under this
23 section, which must be paid to the city general fund and the county treasury and the
24 state general fund at least once each quarter. At the time of payment, the clerk of
25 district court shall account under oath to the city auditor, county treasurer, and state
26 treasurer for all money collected. In the contract, the city, county, and state may agree
27 to a division of expenses, including jury and witness expenses, related to cases
28 transferred under this section. In the absence of a contract, all fees, fines, costs,
29 forfeitures, and any other monetary consideration collected from transferred cases
30 must be deposited in the state general fund.

40-18.1-19. Appeals from determinations of municipal judge not in courts of record.

1. AnFor a case filed before July 1, 2026, an appeal may be taken to the district court from a judgment of conviction or order deferring imposition of sentence in a municipal court in accordance with the North 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. Appeals from determinations of municipal judge in courts of record.

1. For a case filed on or after July 1, 2026, an appeal may be taken to the district court from a judgment of conviction or order deferring imposition of sentence in a municipal court in accordance with the North Dakota Rules of Criminal Procedure.
2. An appeal from a municipal court of record must originate from the file, record, recording, transcript, or evidence from the municipal court.
3. The district court may affirm, reverse, or amend any appeal order or judgment and may direct the proper order or judgment be entered or direct a new trial or further proceeding be had in the court from which the appeal was taken.

40-18.1-2040-18.1-21. 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

1 an act or omission constituting a contempt in a municipal court is not committed in the presence
2 of the municipal judge, an affidavit alleging the facts may be filed and a warrant of arrest may be
3 issued on which the individual accused may be arrested and brought before the municipal judge
4 immediately. The individual must be given a reasonable opportunity to employ counsel and
5 defend against the alleged contempt. After hearing the allegations and proof, the municipal
6 judge may discharge the individual or adjudge the individual guilty and may punish by fine,
7 imprisonment, or both. The fine in any case may not exceed one thousand five hundred dollars
8 and the imprisonment may not exceed thirty days.

9 **40-18.1-2140-18.1-22. Judgment for fines, fees, or costs - Procedure.**

- 10 1. If the judgment imposes a fine or assesses a fee, the municipal judge may order a
11 certified copy of the judgment be filed in the office of the clerk of the district court of
12 any county in the state. The clerk of district court shall treat the municipal court
13 judgment in the same manner as a civil judgment of any district court of any county of
14 the state.
- 15 2. At the time of filing the judgment with the office of the clerk of district court, the
16 municipal court judge shall order an affidavit providing the name and last-known
17 mailing address of the defendant and otherwise complying with section 28-20-15 be
18 filed.
- 19 3. Upon the filing of the judgment and affidavit, the clerk of municipal court shall mail
20 notice of the filing of the municipal judgment to the defendant at the defendant's last-
21 known address and file proof of mailing with the district court. The notice must include
22 the name and mailing address of the municipal court.
- 23 4. An execution of other process for enforcement of a municipal court judgment filed
24 under this section may not be issued until ten days after the date the judgment is filed.
- 25 5. If the defendant shows the district court of any county that an appeal from the
26 judgment is pending or will be taken, the court shall stay enforcement of the municipal
27 court judgment until the appeal is concluded or the time for appeal expires.
- 28 6. The municipal judge shall order the defendant to pay a filing fee of ten dollars to the
29 clerk of district court.

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

4 **~~40-18.1-22~~40-18.1-23. Transfer of municipal ordinance cases to district court.**

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

11 **~~40-18.1-23~~40-18.1-24. Abolition of municipal court in a city with a population of fewer**
12 **than five thousand.**

- 13 1. The governing body of a city with a population of fewer than five thousand having a
14 municipal court may by resolution abolish its municipal court. The jurisdiction of a
15 municipal court abolished by resolution must be transferred to the district court of the
16 district in which the city is located.
- 17 2. The city auditor shall provide a copy of the resolution abolishing the court to the
18 presiding judge and clerk of court of the district court for the district in which the city is
19 located, the state's attorney for the county in which the city is located, and the state
20 court administrator. The resolution must provide the effective date of the transfer of
21 cases, which must be at least ninety days following the date of the resolution.
- 22 3. At least ten days before the effective date of the transfer, the clerk of the municipal
23 court shall deliver to the clerk of the district court all cases pending action by the
24 district court after the effective date of the resolution.
- 25 4. On the effective date of transfer, all proceedings relating to ordinance violations must
26 be within the jurisdiction of the district court. Judgments of courts which cease to exist
27 on the effective date of the resolution continue in effect and the district court may
28 enforce the judgments. Fines, forfeitures, and costs due and unpaid on the effective
29 date of the transfer and those which are subsequently collected on cases pending on
30 the effective date of the transfer must be collected by the district court and remitted to
31 the city.

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

40-18.1-2440-18.1-25. Abolition of municipal court in a city with a population of five thousand or more.

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

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

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

c. The state court administrator's office.

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

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

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

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

40-18.1-2540-18.1-26. Compliance with rules adopted by the supreme court.

1. The supreme court shall adopt rules governing:

a. Municipal court procedure;

b. Qualifications, ethical standards, and education of municipal judges;

- 1 c. Qualification and education of municipal clerks;
- 2 d. Requirements of municipal court facilities; and
- 3 e. Records to be maintained and reports to be filed by the municipal court.
- 4 2. Each municipal judge and alternate judge shall comply with the rules established by
- 5 the supreme court. The city shall reimburse the judge for necessary travel expenses,
- 6 meals, and lodging relating to compliance with the rules regarding qualifications,
- 7 ethical standards, and education in the same manner as other city officials are
- 8 reimbursed.
- 9 3. If a municipal judge or alternate municipal judge fails to fulfill the requirements of the
- 10 rules established by the supreme court, the judicial conduct commission may order the
- 11 municipal judge not preside over municipal court proceedings.

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