



North Dakota Legislative Council

Prepared for the Judiciary Committee
LC# 25.9018.01000
August 2023

MUNICIPAL COURT SERVICES AND PROCEDURES - BACKGROUND MEMORANDUM

Senate Bill No. 2278 (2023) ([appendix](#)) directs the Legislative Management to study the laws and procedures relating to courts established under North Dakota Century Code Chapter 40-18. The study must include an examination of the:

- Number and geographic location of existing municipal courts;
- Access to municipal court ordinances;
- Jurisdiction of the municipal courts;
- Municipal court judge qualifications and training;
- Transfer of cases to district court;
- Appeal of cases to district court;
- Supreme Court general oversight of municipal courts;
- Applicability of judicial administrative rules to municipal courts;
- Requirements for recording proceedings in municipal court; and
- Requirements to report information to the Supreme Court on the establishment or abolition of a court, the election, appointment and removal of municipal court judges and clerks, and annual caseload data and annual financial information on the imposition, collection, and disposition of fines and fees.

NORTH DAKOTA LAW

The establishment, requirements, jurisdiction, and procedures of municipal courts and judges are codified in Chapter 40-18.

Number of Existing Municipal Courts

Eighty-seven of the 355 incorporated cities in North Dakota have established a municipal court. The 87 municipal courts currently are served by 63 municipal judges, 22 of whom are law-trained. A city that did not establish a municipal court when it was first incorporated may create a municipal court by resolution of the governing body.

Jurisdiction and Qualifications of a Municipal Judge

Section 40-18-01 provides a municipal judge within a city having a population of 5,000 or more must be licensed to practice law in this state unless a licensed individual is not available in the city. In a city with a population of less than 5,000, the municipal judge need not be licensed to practice law in this state, nor may the judge be required to be a resident of the city. The municipal judge has jurisdiction to hear, try, and determine offenses against the ordinances of the city except certain violations involving juveniles. The municipal court lacks jurisdiction over juveniles because Section 27-20.2-03 vests exclusive original jurisdiction over children under the age of 18 who are alleged to be delinquent, unruly, or deprived with the juvenile court. Violations of state law are not within the jurisdiction of the municipal courts.

A municipal judge is elected for a 4-year term and Section 40-18-03 provides that a vacancy occurring between elections is filled by the executive officer of the municipality with the consent of the governing body of the municipality.

The municipal court does not have jurisdiction to hear, try, and determine an offense which would be a violation of Section 39-08-01, the state's driving under the influence prohibition, or any 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 7 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 15 years preceding the commission of the offense charged. If such an offense is charged in the municipal court and the judge has notice of a violation of Section 39-08-01 or equivalent ordinance twice within the 7 years, or three times within the 15 years, preceding the commission of the offense charged, the municipal judge is required to dismiss the charge, without prejudice, and direct the charge be filed against the individual in district court.

If a municipal court judge is not licensed to practice law in the state, the municipal court over which that judge presides may not hear, try, or determine an offense that would be a violation of Section 39-08-01 or equivalent ordinance.

Section 12.1-17-01.2 prohibits the municipal court from hearing, trying, or determining a charge of domestic violence.

Municipal Judge Training

North Dakota Supreme Court Administrative Rule 36 requires each new municipal judge to complete a judicial orientation program within 3 months of taking office. All municipal court judges and alternate judges must complete 18 hours of continuing education during each 3-year reporting period. If a municipal judge fails to meet this requirement without an excused absence from the Continuing Judicial Branch Education Commission, the judge's name is referred to the Judicial Conduct Commission for disciplinary action.

Location of Municipal Hearings and Change of Venue

Hearings in municipal court generally are held in the municipal court located in the city where the offense was charged. Section 40-18-21.1 allows a municipal judge to change the venue of a proceeding upon consideration of convenience to the parties and witnesses, judicial efficiency, available facilities, and administration of justice. However, the judge is prohibited from changing the venue under Section 40-18-21.1 if any party to the proceeding objects to the change.

Section 40-18-21.1 also allows a municipal judge to use contemporaneous audio or audiovisual transmission by reliable electronic means in accordance with North Dakota Supreme Court Administrative Rule 52.

Transfer of Municipal Ordinance Cases to District Court

Section 40-18-06.2 requires a city to obtain the agreement of the governing body of the county, the presiding judge of the district court, and the State Court Administrator before a city may transfer some or all municipal ordinance cases to the district court. A city may obtain the template for the contract to transfer municipal ordinances to district court by calling or emailing the State Court Administrator's office. The template includes transfer of cases to the district court for jury trial so there is no need to execute two contracts. These cases are deemed district court cases for purposes of appeal.

Section 40-18-15.1 provides a municipal matter may be transferred to district court for trial if within 28 days after arraignment the defendant has requested in writing to transfer the case to district court and to exercise the defendant's right to a jury trial. After a transfer to district court, if the defendant waives a jury trial, the matter must be remanded to the municipal court for disposition if the defendant and prosecuting attorney agree to the remand. Unless remanded to the municipal court by agreement of the parties, the district court retains jurisdiction for sentencing. The city must provide a prosecuting attorney and, in the case of any indigent defendant, a defense attorney. The city may contract with the county, state, or any individual or entity for prosecution or defense services. The city, county, and state may agree in the contract to a division of all fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred, which must be paid to the city and county treasury and 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, and State Treasurer for all money collected. The city, county, and state also may agree in the contract 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.

Appeal from Municipal Court to District Court

Section 40-18-19 provides a judgment of conviction or order deferring imposition of sentence in a municipal court may be appealed to the district court in accordance with the North Dakota Rules of Criminal Procedure. An appeal is perfected by notice of appeal. A perfected appeal to the district court transfers the action to the district court for a new trial. The district court takes judicial notice of the ordinances of the city in an appeal from a determination in a municipal court. 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 municipal ordinance. Expenses necessary for the adequate defense of a needy person in an appeal to 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 wherein the alleged offense took place.

Supreme Court Oversight of Municipal Courts

Section 1 of Article VI of the Constitution of North Dakota provides the judicial power of the state is vested in a unified judicial system consisting of a supreme court, a district court, and other courts as may be provided by law. The Chief Justice of the Supreme Court is the administrative head of the unified judicial system with the authority to adopt rules of procedure to be followed by all courts of the state. Municipal courts are statutorily created courts and as such are part of the unified judicial system.

SUGGESTED STUDY APPROACH

The committee may want to receive testimony from the Supreme Court, district court judges, the State Court Administrator, municipal judges, the North Dakota League of Cities, and the State Bar Association of North Dakota regarding municipal court procedures and services, the municipal court's role and value to local communities and the legal system, suggested improvements, structural concerns, and the possible expansion or narrowing of municipal court jurisdiction.

ATTACH:1