

DIFFERENCES IN DUI PUNISHMENTS AND RECIDIVISM BETWEEN TRANSFERS
AMONG MUNICIPAL AND DISTRICT COURT

A Thesis
Submitted to the Graduate Faculty
of the
North Dakota State University
of Agriculture and Applied Science

By

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In Partial Fulfillment of the Requirements
for the Degree of
MASTER OF ARTS

Major Program:
Criminal Justice

November 2021

Fargo, North Dakota

North Dakota State University
Graduate School

Title
DIFFERENCES IN DUI PUNISHMENTS AND RECIDIVISM
BETWEEN TRANSFERS AMONG MUNICIPAL AND DISTRICT
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ABSTRACT

The relationship between court transfers and punishment differences, as well as changes in recidivism, have been seldomly researched. This paper adds to the body of research by comparing punishments from DUI cases heard in municipal court and DUI cases heard in district court. The differences in recidivism between the defendants whose cases were heard in municipal and district court are also compared. A systematic sample of DUI offenders from Fargo and West Fargo, North Dakota make up the experimental and control groups. The 511 non-transfer cases are analyzed against the 402 transfer cases using crosstabulations and logistic regression techniques. The results of the analyses suggest mild support for transferring to district court and no support for any change in recidivism. Specific details of the results are discussed below, as well as the limitations of the study.

ACKNOWLEDGMENTS

I would like to acknowledge my friends and family that helped support me throughout my time in the Criminal Justice Graduate Program. I would also like to thank my committee chair Doctor Kevin Thompson for working with me and providing feedback during this process. My thanks also go out to Doctor Andrew Myer and Doctor Christina Hargiss who make up the rest of my committee. Thank you for all of the time you set aside from your busy schedules to be a part of my committee.

DEDICATION

I dedicate this thesis to my mother, Sandy L. Menke. Thank you for all of the love and support you gave me. You will always be held close to my heart. Your memory continues to motivate and drive me forward.

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INTRODUCTION

The rational choice perspective on crime focuses on a core set of assumptions that crime is chosen in a purposive and deliberate fashion (Clarke and Cornish, 1985). In this perspective, individuals choose action that benefits them in terms of increasing their financial situation, reducing pain, and averting deprivation of freedoms. Persons charged with crime are also rational actors and similarly apply the rational choice perspective toward making deals within the justice system that benefit them (Poythress et al., 2002; Maroney, 2006). These benefits can include dismissal of charges, non-guilty verdicts, or convictions that result in reduced penalties. Most persons charged with a crime have limited or constrained rationality to make rational decisions within the justice system (Opp, 1997). Nevertheless, having defense attorneys acting on their behalf can elevate information acquisition such that defendants are more capable of juggling risk and reward. Such is the case when defendants are faced with the opportunity to have their case transferred from one jurisdiction to another.

Juvenile court transfer rates have been in decline nationally for 20 years (JJGPS, 2017). According to *Juvenile Justice Geography, Policy, Practice & Statistics (2017)*, the only nationally known statistics regarding judicial transfers are juveniles transferring to adult court. There is a current lack of empirical data regarding criminal transfers between municipal and district court. Although the specific transferring process focused on by this study is missing substantive studies, similar studies were used to help understand transferring trends. It is important to note that the following transfer statements are from juveniles transferring to adult court. Juvenile transfers to adult court do not directly correlate to adults transferring from municipal to district court, but the following information is the closest studies to be found relating to some type of transfer process.

Since its most recent peak in 1994 at approximately 13,000 juvenile transfers, transfers to adult court have been steadily declining to about 4,200 transfers a year in 2014 (JJGPS, 2017). State transfer rates are much more varied in frequency and trend. Wisconsin fits the national trend of decreasing juvenile transfer cases. Since 2005, Wisconsin juvenile criminal cases transferred to adult court have decreased from 377 cases to 105 cases in 2016 (JJGPS, 2017). Mississippi and Georgia, conversely, have experienced an increase in transfers. From 2008 to 2016, transfers rose from 79 cases to 161 in Mississippi. Georgia's transfers increased from 72 cases to 205 cases between 2006 to 2014 (JJGPS, 2017).

This study does not compare juvenile transfers to adult court transfers. It also uses data collected from Fargo and West Fargo, North Dakota public court records. Unlike adults, who have the choice to transfer to district court, juvenile transfers to adult court are not voluntary. Juveniles transferred to adult court may also face harsher punishments. Unfortunately, there is a lack of research on municipal court transfers. The juvenile court transfers mentioned above help frame the concept of transferring, but they should not be a direct comparison. Applying the rationale for juvenile transfers, or using judicial procedures in order to garner stronger penalties, raises a question. Does the transfer process result in more lenient or stricter penalties in other criminal proceedings?

When it comes to someone charged of a crime, the end goal remains the same for every defendant. Attempting to get a better deal or lighter sentence by transferring courts is a rational strategy. A typical rational decision is constrained by information available at the time (Opp, 1997). Unfortunately, transfers from municipal to district court rely mostly on anecdotal information and legal counsel, rather than empirical evidence of its success. Specifically, the nonempirical perceptions lawyers have of certain judges. These perceptions are based on a

judge's sentencing history in similar cases. Stories the defendant has heard from friends or family can also affect a defendant's decision to transfer. While these stories can have a big impact on a defendant's decision-making process, the decision to transfer from municipal to district court ultimately rests on the defendant.

This study examines the notion that defendants charged with Driving Under the Influence (DUI) seek transfers from one jurisdiction to another, basically shopping for the best judicial outcome for their case. If defendants are rational actors and they feel that the judicial system can be used to their advantage, then those who transfer might be more inclined to continue their drinking and driving behavior following their court outcome.

The Judicial System and Transfers

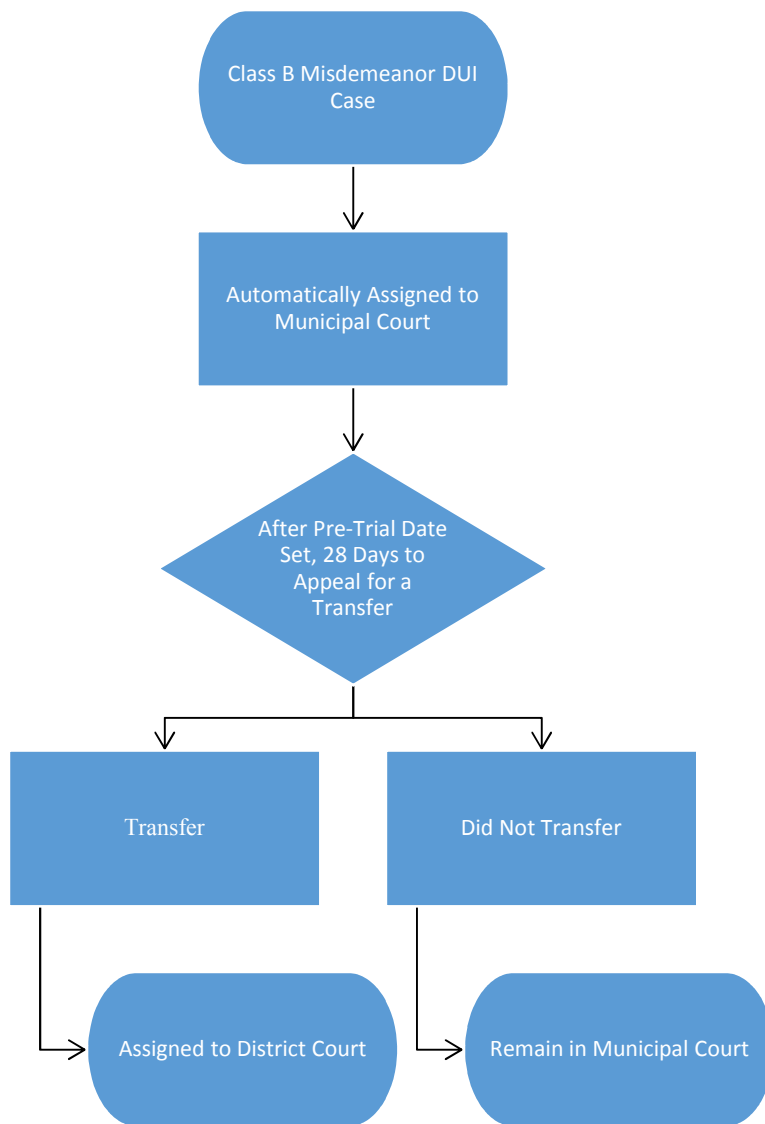
The United States' judicial system is a complex array of courts and legal precedents. The lowest court level contains the municipal court system. They service misdemeanor offenses that occur within the municipality or city limits. Misdemeanor level offenses automatically start in municipal court. During pretrial, a judge sets the court date for the criminal hearing. A defendant then has a short time period (28 days in North Dakota) to appeal for a transfer to district court. District courts are one level above municipal courts in terms of jurisdiction size and hear a wider variety of criminal cases (E. Johnson, personal communication, October 20, 2020).

Municipal court is defined as a court located within cities and larger towns. They have jurisdiction over the cases that arise within those municipalities, such as criminal and non-criminal violation of city ordinances, with the exception of certain violations involving juveniles (State of North Dakota Courts, 2021b). This includes traffic violations, infractions, and Class B misdemeanors [N.D.C.C § 40-05]. Disorderly conduct, false representation of marital status, prostitution, theft of cable TV services, and driving under the influence are a few examples of

Class B misdemeanors that can be heard in a North Dakota municipal court. Municipal courts can also hear civil cases involving disputes not exceeding \$50,000 (State of North Dakota Courts, 2021b). The total number of municipal courts vary among states. North Dakota has 75 municipal judges currently serving in 90 municipal courts (State of North Dakota Courts, 2021b).

Figure 1

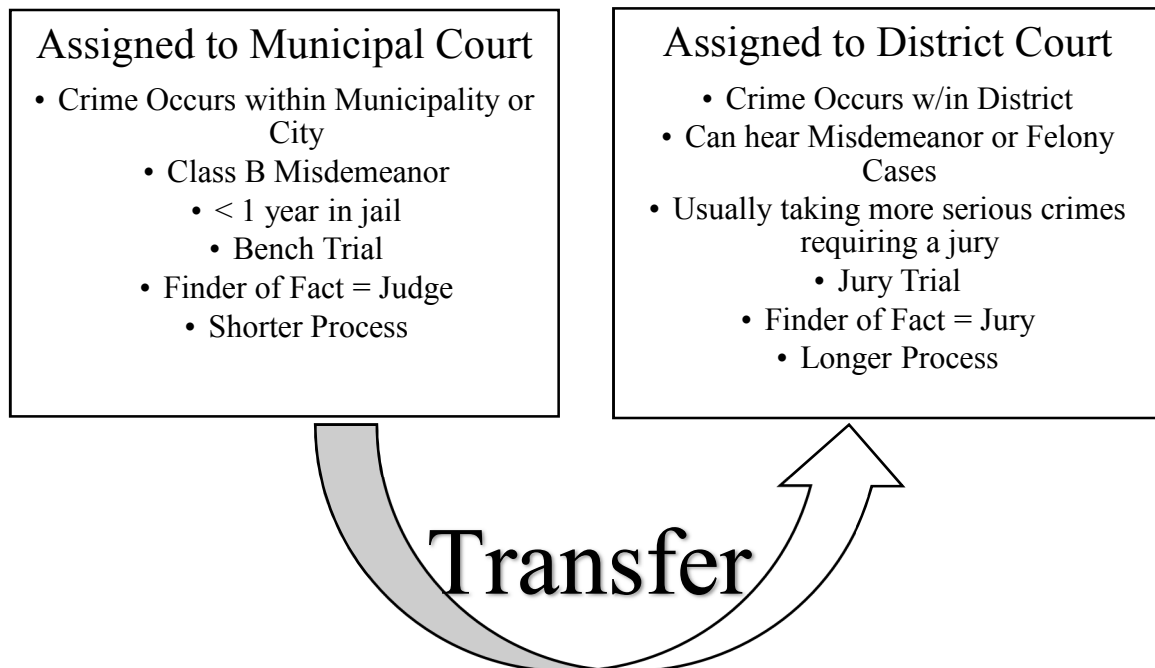
DUI Flowchart



District courts are the largest court in their respective district. Judicial districts vary in size and number between states. North Dakota has eight judicial districts while Minnesota has 10. The 52 district judges in North Dakota serve in the eight districts (State of North Dakota Courts, 2021a). The district courts can hear criminal and civil cases just like municipal courts. The difference between the two is that the criminal cases tried at the district court level can be felonies or misdemeanors, instead of just misdemeanors. District court cases can also be the result of a state or city law violation that has been appealed from municipal court. Criminal trials at district court usually involve felony offenses. The severity of the crimes heard at district court make the court process a more formal affair than municipal court. This means more procedural safeguards, required appearances by the defendant, and having the ability to conduct jury trials (E. Johnson, personal communication, October 20, 2020).

Figure 2

Transfer Breakdown



Jury trials are a constitutional right for any United States citizen accused of a crime that is punishable with jailtime (Frampton, 2012). At the district court level, jury trials happen automatically. A defendant who starts criminal trial proceedings at the district level has the option to waive their right to a jury trial in favor of their case being heard by a district court judge. In municipal court, the defendant is tried via a bench trial or a municipal court judge. A citizen assigned to municipal court can appeal their placement in order to receive a jury trial at the district level. The difference between a bench and jury trial, as well as municipal and district court, is the third-party fact finder. A bench trial uses a judge and a jury trial uses a jury. In both types of trial, a neutral third party, the judge or jury, will take the role as the finder of fact. This third party will hear the evidence presented by the prosecution and defense. If the third party believes that the prosecutor has met the proper burden of proof for guilt as required by law, then the defendant will be found guilty. If the burden has not been met, then the defendant will be found not guilty. Since every defendant facing jail time is entitled to a jury trial, the defendant can basically choose either a judge or jury to hear their case (E. Johnson, personal communication, October 20, 2020).

It should be noted that municipal court transfers can only occur one way, from municipal to district court. Constitutional protections allow for a jury trial to be held at district court for a misdemeanor level offense that is punishable with up to one year of jailtime (Frampton, 2012). A district court cannot transfer a felony case down to municipal court because felony cases must be tried with a jury and municipal courts only hold bench trials. This is the case even if the defendant in a felony case waives their right to a jury trial. The only way a case in a district court can be transferred down to a municipal court is if the case originated in municipal court.

An example of this would be if a defendant accused of trespassing, who is assigned to municipal court in Fargo, North Dakota, appeals their case to be transferred to district court. The appeal is accepted. When the defendant arrives at the district court pretrial, the defendant can waive their right to a jury trial. If they do, then the case is legally required to be remanded back down to municipal court for disposition, as long as the defendant and prosecuting attorney agree. An effort that is ultimately pointless, since the defendant is back to where they started, unless their goal was to stall for time. If the two parties cannot agree, the case is not remanded and the district court retains jurisdiction for sentencing (2017, ch. 280, § 1, SENATE BILL NO. 2132).

There are plenty of reasons to choose one type of trial, bench or jury, over the other. The decision to transfer depends mainly on the case's circumstances, and whether or not a transfer to district court is beneficial for the defendant. One reason to choose a bench trial is if the case involves an advanced legal issue. A judge will likely understand the legal argument better than a jury. A bench trial does not take as long, reducing the cost of lawyers, and is slightly less formal than a jury trial. The presented facts may be repulsive, sexually explicit, racially charged, or humiliating. Even though a law may not have been technically broken, the defendant may worry about the case's unsavory nature and a jury might convict them when no law was broken or when the defendant is truly not guilty (E. Johnson, personal communication, October 20, 2020; S. Dawson, personal communication, November 10, 2020).

A jury trial also has many benefits that could entice a defendant to transfer their case. Even though a judge is well-versed in criminal law, the defendant may not want their fate to be decided by one individual. A jury trial of peers allows for the minds and experiences of various people to influence and hopefully round out any biases that might influence the verdict. If the case is ambiguous regarding whether the defendant broke the law, a jury may be more malleable

than a judge to sway the verdict to not guilty. Hung juries cannot occur during a bench trial because only one judge is making the decision, whereas it only takes one juror to gridlock a jury. The defendant may also be wary of the judge and their preconceived notions of the case, potentially not allowing for a fair trial. A jury of peers may have people with biases, but those opinions can be diluted by other jury members with different experiences. A jury may also identify with the defendant more than a judge, making the jury more sympathetic toward the defendant's case. There are some disadvantages, however, that should be noted. Jury trials take more time because lawyers need to choose the jury members. This process also increases the financial burden of the case. A complex case or legal argument may confuse the jury, resulting in an ineffective argument that could have been better understood by a judge. Juries are also notoriously hard to predict, sometimes acquitting a defendant even though there is strong evidence of guilt and finding guilt when the evidence is subpar (E. Johnson, personal communication, October 20, 2020). Even though it is more likely that experiences and biases will vary among jury members, they may still have to overcome an instinctive bias. Whether that bias is fueled by personal experiences or media consumption, there is no guarantee that a jury will be any less biased than a judge (E. Johnson, personal communication, October 20, 2020).

Another question can be asked about court transfers. Instead of "Why do defendants transfer from municipal to district court?", we can ask "Why do defendants choose to transfer from a bench to a jury trial?". There are other reasons besides the previously mentioned outside factors that constrain a defendant's choice. The biggest constraint is time. Defendants are required by state law to submit their appeal to transfer to district court within a limited time frame. The time allotted varies from state to state. North Dakota currently allows 28 days for an appeal submission to transfer to district court [N.D.C.C. § 40-18-15.1]. In 1987 the time limit to

transfer was shortened to 14 days, but the short time frame resulted in greatly increasing district court participation. In order to relieve the caseload from district courts in the state, the law was amended in 1989 to extend the appeal submission time to 28 days. An appeal can be rescinded if the defendant wants to stay in municipal court, but the appeal process takes time. If the defendant is unsure about staying or transferring, it is better to start the process and not risk missing the deadline (E. Johnson, personal communication, October 20, 2020).

Another possible reason to choose a jury trial over a bench trial is that the threat of a jury trial is a defense attorney's greatest weapon. Jury trials take a lot of work, time, and money to orchestrate. Prosecuting attorneys may not want to deal with the hassle of a jury trial. This gives the defense attorney more leverage when negotiating a plea deal, likely resulting in a more favorable deal for the defendant (E. Johnson, personal communication, October 20, 2020).

A differing case context exists between municipal and district courts. A jury trial for someone's first DUI may seem less serious to a court that also hears homicide cases (E. Johnson, personal communication, October 20, 2020). Whether or not this phenomenon actually exists and makes a difference is an empirical question, but if the defendant believes that it might help their chances at receiving the minimum sentence, then it is worth mentioning as a possible contributing factor towards their decision-making process.

Court transfers occur throughout the United States. A current lack of research however leaves many unanswered questions about the phenomenon. Using data collected from the court system in Fargo, North Dakota, this thesis will explore and evaluate the following questions:

- 1) Are the DUI punishments administered at the district court level less than those administered at the municipal court level?

2) Does the transfer to district court result in a higher probability of DUI recidivism than non-transfer cases?

LITERATURE REVIEW

Rational Choice Theory

Rational choice theory is at the core of this paper. It hinges upon a fundamental assumption that all of the defendants are rational. Rational choice theory states that all people act according to their own free will. The driving force behind that will is a desire to maximize pleasure while minimizing pain. As long as people are rational, they can determine for themselves what is in their best interest and act accordingly (Clarke and Cornish, 1985; Beccaria, 1764). Rational choice theory has been explored and broken down by criminologists since its creation. Their findings assert that the circumstances a person is under when deciding to commit a crime affect their decision-making process. Background factors, previous experience and learning, generalized needs, perceived solution, solutions evaluated, readiness, and reaction to a chance event all contribute to a criminal decision (Clarke and Cornish, 1985). This initial involvement model can easily be applied to a courtroom setting by switching the criminal decision with the decision to transfer courts. A rational actor in court will examine their circumstances as laid out by the initial involvement model, use them to the defendant's advantage, and attempt to receive the most favorable outcome at the end of the trial.

The definition of rationality changes over time. People used to assume rationality among the general public, yet criminal rationality and general rationality are different. Criminal rationality does not need to be assumed. In certain court cases, the rationality of the defendant is the main point of discussion. Such was the case in the Supreme Court case of *Dusky v. United States* (1960). The Supreme Court set a precedent where rationality must be determined through specific tests (*Dusky v. United States*, 362, U.S. 402, 1960).

This precedent created a legal standard for adjudicative competence (Maroney, 2006). The test establishes adjudicative competence by being able to find whether the accused has a sufficient present ability to assist counsel with a reasonable degree of rational understanding. Also, whether the defendant has a rational and factual understanding of the court's proceedings against him/her (Maroney, 2006; Dusky v. United States, 362, U.S. 402, 1960). These tests have been broken down further and operationalized for legal use.

The test establishing competence to assist counsel requires the defendant to understand the charges and basic elements of the court system. The defendant must also be able to appreciate the gravity of being a subject under criminal prosecution. Relating pertinent information regarding the facts of the case to the defense counsel is the third component. If the defendant can do these three tasks then they can be found to have basic adjudicative competence (Poythress et al., 2002). The second test to determine adjudicative competence is establishing whether or not the defendant has decisional competence. The defendant must be able to understand relevant information about the specific issue being decided on, appreciate the significance of that decision and how it relates to their situation, logically run through other courses of action available to them, and actually decide among the alternatives (Poythress et al., 2002). Once the tests determine that a defendant is competent enough to assist counsel and has decisional competence, it can be confidently stated that the defendant has adjudicative competence and is therefore rational (Poythress et al., 2002; Maroney, 2006).

The fact that the subjects of this research are able to make decisions regarding their court hearings should be evidence enough towards their rationality. These rational actors can determine whether their trial would be best held in municipal or district court, in front of a judge or jury. This determination can be made by the results of similar cases, knowledge of a judge's

aptitude for equal weighing of the facts, and the seriousness of the crime (Read et al., 2006; Hersch, 2006). A defendant's rationality is bounded by their judicial knowledge and the quality of the advice given by their lawyer. A rational choice is constrained by the information available (Opp, 1997). If a defendant or their lawyer is not aware of something relevant that may affect the decision to transfer, then their rationality is bounded. This paper assumes that the decision to transfer from municipal to district court is based on all of the facts, an attempt to reduce pain (the sentence) and maximize pleasure (time spent not in jail), and are, therefore, rational. Adjudicative competence and traditional rational choice theory demonstrate that any defendant who is not deemed incompetent, can stand trial and make decisions rooted in their own self-interest.

Ultimately, for the purposes of this paper, the reasoning behind the choice to transfer is irrelevant, as long as a choice is made. The ultimate goal for a defendant is to receive the smallest punishment possible, and the best punishment is no punishment. Deciding to transfer courts is grounded in this idea. The desire to pick the option of the most pleasure and the least amount of pain is the theoretical premise of rational choice theory (Poythress et al., 2002; Maroney, 2006). Any facts or circumstances surrounding a case fuel the reasoning behind transferring by informing the defendant in order to make a rational decision. A rational decision is inherently beneficial to the actor, always using their free will in their own self-interest. In the context of a courtroom, a rational decision means deciding to act on the option that will result in the smallest sentence. Whether the rational choice is to accept a plea deal, go to trial, or transfer courts, the decision rests on the perceived benefit to the defendant.

An easy and relevant example of rational choice theory in action is the practice of judge shopping. Judge shopping is defined as an attempt by a defendant and/or their legal counsel to

purposefully seek adjournments to delay the trial. The intention is for the judge to rotate out of a circuit court or delay the proceedings enough to be assigned to a new judge. Judge rotation in North Dakota's district courts occurs through elections. Each district must elect enough judges to fill the number of courts in their district. The elected judges will then hold office for six years before needing to be reelected [N.D.C.C § 27-05-02]. District judges could also be moved or made responsible for covering cases if a vacancy appears from a judge retiring, not seeking reelection, or fails to file the paperwork petitioning for candidacy [N.D.C.C § 27-05-02.1(2)]. The strategy for waiting for a new judge to be assigned to the case seems to largely be a matter of fortunate timing for the defense. Deliberately seeking adjournments help the defendant and the defense attorney avoid judges who are known or perceived to be harsh when sentencing certain crimes, and potentially increase the odds of being assigned to a judge who is known or perceived to sentence more leniently (Weatherburn and Lind, 1996). Exact data on this phenomenon does not exist since the practice of judge shopping is frowned upon within the profession, and a lawyer asked about it may be less inclined to tell the truth on the matter.

Some specific ways lawyers are given adjournments are through certain requests or petitions to the court. Requesting time to properly form a legal defense is one technique, while petitioning for an in-person translator is another. Translators in court are a necessity for a proper fair trial where a defendant is not be fluent in English, and securing a translator takes time (Namakula, 2012). Transferring courts is also a widely used course of action. Transferring from municipal court to district court allows the defense team more time to form a defense, judge shop, and bring the trial to a more favorable location. A transfer could result in a better plea deal, a less punitive punishment post-trial, or even a greater likelihood of an acquittal (E. Johnson, personal communication, October 20, 2020). All of these attempts to gain adjournments are done

in the interest of the defendant. The defense team tries its best to be beneficial the defendant. When the defendant approves of these actions, giving the defense lawyer permission to proceed, it demonstrates rationality. The defendant is choosing the path with the least amount of pain, as laid out by the defense lawyer.

An insanity plea is like the big brother version of adjudicative competence. Both can be used as criminal defense strategies as a possible excuse that removes the culpability from the defendant's actions. In either case, the defense lawyer is making a rational decision on the behalf of the defendant. Their main goal is to avoid criminal penalties for their client in favor of placement in a psychiatric institution. While adjudicative competence involves determining the defendant's rationality and their ability to stand trial, the insanity plea takes it one step further. For defendant's with severe mental illness, the lawyer will admit that the crime did occur by their client's actions but that the actions were the result of a "disordered mind" (Nestor and Haycock, 1997). Not only is the defendant not fit for trial, but they should be viewed as "not guilty" because of the mitigating factors directly correlated to the defendant's mental illness (Mabry, 2020). Whether or not this defense works depends on the case. The main point is that there are many techniques and legal precedents that lawyers and their clients can attempt to exploit in order for the defendant to receive a more lenient sentence. A mindset that potentially reveals the defendant may be more criminogenic in nature. Using their lawyer's legal advice to get off easy so they can go right back to committing crimes.

Another way a defendant may use the system to their advantage through rational thinking is making a case over the infringement of their constitutional rights. The 4th Amendment guarantees against unreasonable searches and seizures, due process under the law is guaranteed by the 5th and 14th Amendments, and the 6th Amendment guarantees several rights specifically

relevant to this paper. The 6th Amendment states that an accused person has the right to a speedy and public trial, by an impartial jury of the State and district where the crime was committed. The accused also has the right to have the assistance of counsel for their defense (U.S. Const. amend. VI). The 6th Amendment is essential to the United States' judicial system. The guarantees made by the 6th Amendment provide the foundation to how courts in the U.S. are run, from selecting court dates to jury selection to the right to an attorney. If these rights are ever infringed upon, an accused person has a legitimate claim to have the case thrown out because their rights were violated (U.S. Const. amend. VI).

Bench vs. Jury Trials

The United States' judicial system is unique among other judiciary systems around the world for its sheer size and complexity. Multileveled courts hear cases of varying degrees of seriousness, specialized courts exist to ease the caseload burden off the main courts, and the Supreme Court has final say over all court cases that reach them. The judicial system in the United States is far from perfect and is routinely criticized. A prominent criticism is that the process is too slow, a result of backed-up caseloads and increased wait times for cases to be adjudicated. Judges and juries tasked with determining the facts of a case can only go as quickly as the trial process allows.

Bench and jury trials do not occur at the same rate (Frampton, 2012). These differing rates are demonstrated when comparing the bench and jury trial rates from the same state, as well as comparing the rates among different states (Frampton, 2012). Bench trials occur much more frequently. A large contributor to the disparity is existing legislation. These laws attempt to reduce the number of lengthy jury trials performed in favor of increasing participation in the faster bench trials. Legislation, like the 1994 "Misdemeanor Streamlining Act" in Washington

D.C., drastically reduced the number of its jury cases by legally reducing the max misdemeanor punishments from one year to 180 days. This reduction prevents the automatic invocation of the Sixth Amendment which guarantees a jury trial if the potential punishment is over six months in jail. Instead of starting in a jury trial, these cases start at the municipal level in front of a judge. Jury trials can still occur after a transfer, but many cases simply remain in municipal court. The cases can be completed quickly in bench trials and then move on to the next case. Other overburdened state court systems with a limited budget followed suit attempting to alleviate their caseload by reducing the penalties for misdemeanors. Since the right to a jury trial no longer automatically applied, the bench trials took on these low-level crime cases. This shift resulted in more cases being heard at bench trials, freeing up jury trials to hear more serious cases (Frampton, 2012). At the state level, state constitutions have been reexamined to narrow the scope of what criminal case is eligible for a jury trial. South Dakota in 1980 interpreted its constitution to allow a jury trial to be conducted in any cases that involved a punishment of a \$20 fine or more. South Dakota's state constitution has since been interpreted to hold jury trials to cover crimes that hold a punishment of at least one year in jail (Frampton, 2012). The Sixth Amendment provides the framework for the disparity between bench and jury trials, and the state's constitution provides the variation found among bench and jury trial rates among different states.

Even with this variation, a question remains: Is there a difference in sentencing between defendants found guilty of the same crime when heard at a bench trial and jury trial? This question is not including the negotiation of a plea deal, but actually have the finders of fact hear the case and determine the verdict themselves. Is the criminal punishment levied at a bench trial result in a reduction of time to be served, smaller fines, or probation when compared to jury

trials? Unfortunately, this question has seldom been the subject of empirical testing. The research that exists contains a nuanced answer, dependent on specific state laws and case facts.

Judges

Judges themselves are not responsible for the backlog of cases requiring trial, but they do play a role in moving cases along. The fastest way to resolve a case is through a plea bargain. A plea bargain is an agreement made between the defendant and prosecutor. The defendant agrees to plead guilty to a particular charge in order for a reduction in the criminal charge or a dismissal of lesser charges (E. Johnson, personal communication, October 20, 2020). A couple examples of this phenomenon occurring are the reduction of a felony theft to misdemeanor theft or dropping the several smaller charges attached to a robbery case to just a robbery charge. Plea bargains allow all involved parties to avoid a lengthy and costly trial, with the added benefit to the defendant of not being convicted of a more serious crime(s). The hearing is over and the court can begin a new case. Although plea bargains help speed up trials, the victims and their families may not appreciate the fact that their victimizer got off with a lighter sentence. Judges are generally criticized for their leniency in sentencing, even though plea bargains are not of their making. Judges have plenty of discretion for sentencing when a case is not solved by plea bargain. Sentences for the same crime can vary between states, case facts, and even the judges hearing the case. The criticism about judge leniency grows when a defendant receives a lower punishment at the judge's discretion than expected by the victim or their family. Even though this criticism exists, there is evidence that judges are as severe or more severe in their sentencing than study participants when given the same case facts and sentencing guidelines (Diamond and Stalans, 1989).

The leniency of judges may not be as true as people think, but there is no denying that judges do vary their sentences between cases (Weatherburn and Lind, 1996). That is not to say, however, that judges are randomly deciding what sentence to use. The discretion that judges have allows them to take in all of the facts of a case in order to make the best decision for the appropriate punishment befitting the crime. Discretion is necessary because the law cannot possibly be written in a way that will account for every contributing or mitigating case factors. The law lays out guidelines on what the minimum and maximum sentence can be for a crime, and it is up to the judge to use their discretion to interpret the facts of the case and determine the proper punishment within the confines of the law (Brannen et al., 2006; Weatherburn and Lind, 1996; Salekin et al., 2002; Redding, 2011). A proper punishment can mean something different to every person involved in a criminal hearing. Judges are only human and are subject to their own biases. Different judges place different weight on certain factors of a case (D'Angelo, 2007; Redding, 2011; Salekin et al., 2002; Brannen, 2006; Weatherburn and Lind, 1996). The judge's emphasis of certain case factors could be enough to make a defendant consider transferring to a different court in order to receive a fairer trial and a potentially lessened sentence.

Juries

If a defendant is worried that the municipal court judge may place an emphasis on a factor of their case, the defendant can exercise their right to a jury trial at district court. The jury size required by state law can be changed. For example, North Dakota's Rule 23 regarding trial by jury or by court states that a felony case must have twelve qualified jurors, while misdemeanor cases can have six qualified jurors unless the defendant demands a jury of twelve. Jury size is often overlooked, but there is evidence that jury size can make a difference when determining guilt. Larger juries hang more often than smaller juries (Roper, 1980). A hung jury

results in a mistrial, which could result in a new trial or the prosecution may just drop the charge. Either way, if the defendant's goal is to avoid a guilty verdict, their best bet is a twelve-person jury trial.

Much like judges, jurors are not perfect. While juries have been shown to be able to comprehend complex cases, juries are made up of our peers, not legal experts (Najdowski and Weintraub, 2020; Julian, 2008). It unreasonable to expect every citizen to have the same legal knowledge as a judge or lawyer. Remaining impartial is also a difficult standard for any person to maintain, especially a juror. They deal with their own personal biases that even the best lawyer cannot weed out during voir dire, jury selection. Although those biases may be rounded out by the different perspectives and experiences of the other jurors, a commonly held bias by society may not provide the most reassurance to a defendant criminally accused of some taboo act (Read et al., 2006). Any biases they may have are only held back by an ethical commitment to represent a fair juror in court. Juries can also be swayed. Testimonial consistency in a trial is a base mark of accuracy, but there is evidence that confidence is actually more likely to influence a jury than consistency (Brewer, 2002). The confidence of a spoken word does not make it truth. It demonstrates that juries do their best to determine the truth in a court case, but they are not infallible and can make a mistake as easily as any judge.

The Criminal Mindset

The defendant's intentions behind the transfer is worthy of discussion. Rationality has already been established. The defendant will make rational choices in their own self-interest (Clarke and Cornish, 1985), but how do these choices affect the behaviors after the trial is concluded? There is a growing body of literature centered around criminal cognitive processes. The rational choices made in a courtroom setting involve lowering or avoiding criminal

punishment, inherently reducing any deterring factors from punishment and any rehabilitative efforts that may have resulted in a conviction.

Criminal thought processes, or antisocial cognition, does everything it can to protect, advance, and maintain its criminal lifestyle (Walters, 1990). Staying out of jail and avoiding criminal punishment align with antisocial cognition quite nicely. The defendant's criminal lifestyle is simultaneously protected, advanced, and maintained by receiving a reduced sentence. Having antisocial cognitions is also a strong predictor of recidivism (Andrews and Bonta, 2010; Walters and Cohen, 2016). A criminal with increased criminal thought processes, or antisocial traits, is much more likely to commit new crimes (Andrews and Bonta, 2003; Walters and Cohen, 2016). Include a lack of deterrence and rehabilitative programs that come from incarceration, and the likelihood of committing new crime is that much greater.

Justification of the Transfer

There are many factors that a defendant can use to justify a transfer to district court. One of those goals is a better plea deal. Firstly, the threat of taking a case to a jury trial carries strong leverage for the defense attorney over the prosecuting attorney (S. Dawson, personal communication, November 10, 2020; E. Johnson, personal communication, October 20, 2020). Before the transfer even occurs, an agreeable plea deal for the defendant may be struck to avoid taking the time to assemble the jurors and conduct the trial. If a plea deal is not made, the transfer could be a tool by the defense to buy their client time to complete a treatment program, community service, or something similar in order to have stronger negotiating power for a new plea deal with the prosecutor before the jury trial starts (S. Dawson, personal communication, November 10, 2020; Hersch, 2006). Reducing a criminal sentence via a plea deal provides a powerful incentive for the defendant, but it is not the only reason for transferring to district court.

The peace of mind that comes with a jury of peers tasked with finding guilt over a single judge is another justification for transferring to district court (E. Johnson, personal communication, October 20, 2020). Although juries are not perfect at suppressing their biases, the goal of having many voices determining the verdict instead of one is appealing to defendants (King, 2005). An overly strict judge or a judge who places more weight on a certain aspect of a crime could lead to a harsher sentence (Weatherburn and Lind, 1996; Brannen et al., 2006; Salekin et al., 2002; D'Angelo, 2007). The few extreme opinions held among the jurors about the case on either end of the spectrum will be overruled by the majority, and more moderate, middle. The jury will have to come to an agreement about the defendant's guilt or risk a mistrial (American Bar Association, 2019). Either way the defendant will not be subject to an unchecked extreme opinion about their case and they are granted more time before a verdict is rendered while a new trial is being constructed (Read et al., 2006). These justifications are commonly held among defense attorneys, but the actual validity of these notions has been empirically tested very little.

The current body of research examines guilty vs. not guilty verdicts found between bench and jury trials of the same crime. Guilty verdicts result in some type of punishment, while not guilty verdicts garner no punishments. Although this research is not as specific as the question posed in this paper, it does answer the question, if a bit generally. The aforementioned nuance is the seriousness of the crime being heard. The context is different when the trial is being held for a theft rather than child sexual abuse. Crimes that society considers to be especially heinous, like child sexual abuse, result in a larger percent of guilty verdicts when heard by a jury (Read et al., 2006). Judges are trained to listen to the facts of the case, but juries do not have this training and are subject to more of a societal bias.

The Role of Lawyers

Lawyers play an important role in the United States' criminal justice system. Although defense lawyers are generally seen as useful in securing their clients better plea deals and reduced sentences, current research suggests that the sentencing results from retaining a lawyer are less than perfect for the defendant (Peck and Beaudry-Cyr, 2016). There are mixed results regarding the benefits of retaining a lawyer as well as disparities between the type of lawyer used.

The role of a lawyer is to act within the confines of the law in accordance to their client's best interest. Having a lawyer present during courtroom proceedings is deemed to be essential for any defendant. A defendant representing themselves in the courtroom, or *pro se*, is viewed to be a foolish choice. Lawyers are trained to know the law and fight for their clients. It makes sense that lawyers should be beneficial to the people they represent. There is empirical evidence that supports this belief. Judges listen to defense lawyers and their rebuttals to the prosecution's recommendations (Sanborn, 1996; Worden et al., 2018). Lawyers have also been shown to benefit juveniles being tried as adults in criminal court (Grisso and Schwartz, 2000; Worden et al., 2018).

Unfortunately, such positive results are not guaranteed. In juvenile court, the presence of lawyers can exert what seems to be an extra independent effect on disposition severity (Feld, 1988). This independent effect is separate from the case factors. Other juveniles with similar cases that did not have lawyers present during their disposition actually received less punitive sentences (Feld, 1988). Another study found similar results with non-white youths. The youth without legal counsel present were more likely to have a judge dismiss the charges against the youth. The non-white youths experienced this effect to a greater extent. Those represented by a

private attorney were significantly more likely than the unrepresented youths to receive a disposition of secure confinement (Guevara, Spohn, and Herz, 2004). Both studies demonstrate empirical results directly counter to the belief that lawyers are beneficial to their clients.

The overall benefit of retaining a lawyer has not been unilaterally supported. In fact, there is evidence to suggest a difference between the type of lawyer used. Public defenders are usually seen as overworked, unable to devote the proper amount of time to a case, and are less effective than private attorneys. Research conducted by Williams (2013) found that public defenders come up short when compared to retained attorneys. The clients of public defenders are more likely to be detained before trial, have a reduced likelihood that the charges will be dismissed, and the defendant is at a greater risk of being convicted (Williams, 2013).

Much like having a lawyer present, the research regarding the effectiveness of the type of lawyer used is not consistent. Anderson and Heaton (2012) find that the public defenders in their study performed much better than the appointed counsel. The public defenders reduced conviction rates by 19 percent, lowered life sentence conviction rates by 62 percent, and decreased the overall expected incarceration time by 24 percent (Anderson and Heaton, 2012). Even though this is one study, it empirically shows that the commonly held beliefs about public defenders do not always match reality.

The role of lawyers is complicated, varied, and its overall effectiveness is a matter of debate. A competent, informed lawyer can help their clients make the best decisions in regards to their criminal trial. Lawyers certainly have not been proven to be a hinderance to their clients (Worden et al., 2018; Anderson and Heaton, 2012; Grisso and Schwartz, 2000; Sanborn, 1996). Further examination of the role of lawyers and the benefits to their clients is needed.

CURRENT STUDY

The current study empirically tests whether transferring a case from municipal to district court results in differing outcomes. This study also examines whether DUI sentences administered at the district court level are less severe than those administered at the municipal court level. The potential increase or decrease in recidivism following the transfer or non-transfer forms the focus of this paper.

This paper addresses two research questions. First, is there a more lenient court outcome for the defendant when transferred to district court? The prior research on this question is quite varied; some support the benefits to transferring to a jury trial in district court (Bushway and Piehl, 2001; Julian, 2008; Diamond and Stalans, 1989; Weatherburn and Lind, 1996), while other research supports remaining in front of a judge in municipal court (King, 2005; King and Noble, 2005; Read, Connolly, and Welsh, 2006). There is also research suggesting that contextual factors of the case affect the benefits of transferring (Brannen et al., 2006; Salekin et al., 2002; D'Angelo, 2007; Redding, 2011; Bushway and Piehl, 2001; Weidner, Frase, and Schultz, 2005; Ulmer and Johnson, 2004; King, 2005; Read, Connolly, and Welsh, 2006). In particular, heinous crimes find more lenient sentences and non-convictions in bench trials, while less serious offenses have greater success when tried in front of a jury. Keeping in mind that this paper is analyzing DUI cases, the first research question states that DUI cases that are transferred to district court will receive more lenient sentences than non-transferred cases.

The second research question assesses whether the court transfer results in an increase or decrease in recidivism. The rationale for a prediction involving an increase in recidivism is a result of a prevalent criminal mindset within the transferees who are willing to work the criminal justice system to their benefit. Another way to word the term criminal mindset is antisocial

cognition. Antisocial cognition is defined as a cognitive pattern with the sole purpose to advance, protect, and maintain a lifestyle of criminal actions (Walters, 1990). It is a strong predictor of recidivism (Andrews and Bonta, 2010). A criminal with increased antisocial traits is much more likely to commit new crimes (Andrews and Bonta, 2003). It then stands to reason that a person with an antisocial cognition will want to advance, protect, and maintain their lifestyle. A court transfer offers a simple course of action to improve the likelihood that the criminal will not receive punishment.

METHODS

Data

The current study uses existing data of DUI cases assigned to municipal court. This data is publicly available in county records collected by a second party. The DUI cases used for this research come from Cass County, North Dakota. Specifically, the DUI arrests made by the Fargo and West Fargo Police Departments. The subjects of study are from the 9,700 total misdemeanor criminal cases that occurred from 2006 – 2009 in Cass County, ND. The group of interest for this study are the DUI arrests, comprising 41 percent of this data set or 3,940 cases. The other arrests in this data set were excluded in order to focus on DUI. Most of the other arrests included minor in possession/consumption charges.

Sampling Technique

To assess charges, offender characteristics, sentencing, and subsequent DUI re-offenses, the North Dakota and Minnesota Criminal data bases will be employed. Minnesota's criminal data base will be used due to Fargo's (the location of the study being made) close proximity to the Minnesota border. From the 3,940 DUI cases, two groups will be randomly selected for inclusion. Power analysis was employed to determine the number of subjects that would be needed to detect an effect, if an effect exists. Several methods exist to assess proper power for a study in the social sciences. Since there is a lack of comparative literature to inform power for this study, two methods were used to determine whether an N of 400 for each group would be sufficient. First, several scholars recommend to include at least 10 observations for each predictor. Since there is a current count of 18 predictor variables, a minimum N of 180 is needed. The second method employed estimations using SPSS Power Analysis – correlations. Estimating an effect size of .12 in the population, two directional, with an alpha level of .05 would require

an N of 670. Thus, 400 cases will be systematically drawn from each group. Based on the N for the data base, a systematic sampling technique will be drawn until at least 400 cases have been drawn for each group. Since the list is ordered by offense date, randomization of the data is unnecessary because of the natural random occurrences of the DUI's. There should be no selection bias in selecting offenders for each group.

The 3,940 DUI cases went through a cleaning process that ending up removing invalid cases from the data. There were 177 cases removed for lack of information; 277 cases were repeat offenders already included in the sample, and 127 cases were A misdemeanor DUI offenses which started in district court. The removal of these cases left a total of 3,359 remaining DUI cases. Those cases were separated into two groups consisting of 804 transfer and 2,555 non-transfer DUI cases. In order to reach valid samples sizes among both groups, the systematic selection of every second transfer case and every fifth non-transfer case was used to create the samples. The resulting sample sizes were 402 transfer cases and 511 non-transfer cases.

Independent Variables

Court participation is the independent variable for both research questions. Municipal vs. district court participation will be coded as No = Stayed in municipal court and Yes = Transferred to district court. The codes used for the independent variables can be found in Table 1. The frequency of occurrence for these variables found within the sample are 511 (56%) non-transfer cases and 402 (44%) transfer cases. The occurrence frequency of this variable is also displayed in Table 2.

Dependent Variables

Table 1 displays the codes for the dependent variables. The dependent variable for the first research question is the nature of the criminal sentence. Criminal sentence is defined in this

paper as the number of days spent in jail and the amount in dollars for the criminal fine. The average length of jailtime for first time DUI defendants in the sample is 29.54 days (Std. Dev. = 3.57). Since the criminal penalties for DUI convictions in North Dakota increase for second time DUI offenders, this study attempts to determine whether there were differences between the transfer and non-transfer groups. In North Dakota, the severity of the second sentence depends on the time span between DUI's and their blood alcohol concentration level at their second arrest. Second time DUI defendants were sentenced for 29.41 days (Std. Dev. = 4.19) so there was no difference in jail time sentenced for first time vs. second time DUI's. The average fines for first time DUI defendants are \$617.26 (Std. Dev. = \$175.08), and the average fines for second time DUI defendants are \$896.32 (Std. Dev. = \$242.82).

Days in jail and criminal fines are not the only available punishments for DUI convictions. Victim impact panel assignment (VIP), alternative sentence program placement, community service hours, and addiction evaluation can also be issued by the court upon conviction. Victim impact panels are used to increase an offender's level of empathy towards the victims or potential victims that the offender's behaviors could have created (Zosky, 2018). The process involves attending a meeting that can have victims, perpetrators, and/or others that have had their lives negatively affected by drunk driving. The panel tells their stories in the hope that the people attending reflect on their actions and refrain from driving drunk again (Zosky, 2018). Alternative sentence program placement sends the defendant to a program separate from the court system. While there the program attempts to work with the defendant to find and address the reasons that fuel the criminal behavior. Usually completing these programs help reduce time spent in jail and are sometimes required to be completed as a condition of the defendant's probation. Community service hours can be completed through a myriad of programs. Progress

in completing the required hours, typically 40 hours for a DUI, are monitored by the probation officer. An addiction evaluation is a simple test, usually a questionnaire, that is used to determine whether the defendant has a chemical dependency issue. If a chemical dependency diagnosis is made, the judge has the power to require the defendant to attend drug treatment.

First time DUI defendants were assigned to a VIP 44.6% of the time (N = 407), and second time DUI defendants were assigned to a VIP 37.5% of the time (N = 57) in the sample. Placement in an alternative sentence program was meted out 9.1% (N = 69) of the cases for first time defendants and 13.2% (N = 20) for second time defendants. Assigned community service hours were given 4.2% (N = 32) of the time for first time DUI defendants, and 4% (N = 6) of the time for second time DUI defendants. First time DUI defendants were mandated to be assessed for an addiction evaluation 95.4% of the time (N = 726), and second time DUI defendants 92.8% of the time (N = 141). Assignment to the 24/7 program¹ would have been included, but the program was started in 2008. The problem being that the data for this study were collected from 2006 – 2009. Without the punishment being available throughout the sample, the measure was not included in the analysis.

The first offense is a Class B misdemeanor that garners a \$500 fine if below a .16 BAC level; this penalty is increased to two days imprisonment and a \$750 fine if the offender's BAC level is .16 or greater; a 91-day driver's license suspension if below .18 BAC, but if their BAC is over .18 then the driver's license suspension is increased to 180-days; and addiction evaluation can also be ordered. The second offense within 7 years is still a Class B misdemeanor punishable

¹ The 24/7 Sobriety Program is a sentencing alternative for DUI offenders. This intervention strategy mandates that the offender stays sober throughout the ordered timeframe as a condition of pre-trial release or bond (Vachal and Kubas, 2018). If they fail to remain sober, the offender will go directly to jail. Participants of the program are required to submit to a blood alcohol concentration test two times a day, wear electric monitoring equipment, drug patches, or comply with a urinalysis test (Vachal and Kubas, 2018).

with 10 days imprisonment and \$1,500 fine; 360 days in the 24/7 program; 365-day driver's license suspension if below .18 BAC, or a 2-year suspension if .18 BAC or greater; and addiction evaluation. The third offense within 7 years is a Class A misdemeanor garnering a possible 120 days imprisonment and \$2,000 fine; 360 days in the 24/7 program; 360 days of supervised probation; 2-year driver's license suspension if below .18 BAC, or a three-year suspension if .18 BAC or greater; and addiction evaluation. The fourth and all subsequent offenses within 15 years are Class C felonies punishable by one year and one day imprisonment and \$2,000 fine, two years in 24/7 program, two years of supervised probation, and addiction evaluation. Other possible penalties are increased if there is a minor in the vehicle, refusal to submit to a chemical test, causing injury, or committing vehicular homicide while driving under the influence (North Dakota Department of Transportation, 2021).

It is essential to note that once the DUI charge in North Dakota exceeds a Class B misdemeanor the jurisdiction of that case no longer resides with the municipal court. A Class A misdemeanor DUI is required by North Dakota state law to be held in district court. A third DUI in seven years, a fourth DUI in fifteen years and any following DUI's in those fifteen years are examples of this and are required to be adjudicated in district court (State of North Dakota Courts, 2021b). This legal change is important to note because any person charged with a Class A misdemeanor DUI or higher cannot transfer between municipal and district because the case is already in district court. As court transfer forms the focus of the current study, only transfers involving first and second time DUIs will be examined for changes in recidivism.

The dependent variable for the second research question is recidivism. This will be measured by committing a new DUI. Particularly, any subsequent DUI on an individual's criminal record after their sampled DUI conviction. A time limit of five-years was placed as a

cut off point for new DUI data collection. A nominal measure of recidivism will be employed: “Did at least one DUI conviction occur after the original conviction within five years after their release from police custody?” The answer will be dichotomous (Yes = 1 and No = 0). Capping the recidivism measure at five years was based on similar recidivism measures from other studies (Belenko et al., 2004; Jaffe et al., 2012; Gilman and Walker, 2020). Some research shows recidivism dropping after the first two years post-release, while measures used in other research tend to stop after the first year (Belenko et al., 2004). The design of the current study allows for the original offense and any new DUI charges to be collected at the same time. The time and effort required are generally limiting factors when measuring recidivism (Knight et al., 1999; Martin et al., 1999). This design allows for an extension from the usual recidivism measure of one to three years. Choosing five years post-release to measure recidivism will help capture new DUI charges that would have otherwise have been missed.

The measure was considered to be expanded to include a specific number of DUI arrests that occurred after the initial conviction. Upon discussion, this expansion was deemed unnecessary. The primary rationale being that if a second conviction were to occur then the defendant would have gone through the criminal justice system a second time. This reintroduces existing variables along with new ones, like previous DUI history. For this reason, the dependent variable for the second research question will be limited to a simple yes/no question regarding DUI recidivism. The codes used for the dependent variable, New DUI within 5 years, are also located in the Table 1. Within the sample, recidivism as it has been defined occurred 18.6% (170) of the time. Most sampled defendants (743 or 81.4%) were not arrested for a new DUI within five years of release. These frequencies can also be found in Table 2.

Control Variables

The current study controls for gender (Female = 0, Male = 1). Much like the overall volume of research done on the subject, there is an absence of research on the differences between men and women transferring from municipal to district court. Among the sampled DUI defendants, 677 defendants (74.2%) were male and 236 defendants (25.8%) were female. Another control variable is the offender's age. Every defendant's birthdate is publicly accessible in the arrest record for the DUI. The birthdate allows for the calculation of the offender's age at the date of offense and their current age (both in years). A defendant's average age at arrest in this study is 31.22 years (Std. Dev. = 11.15). Whether or not the defendant retained a lawyer (No = 0, Yes = 1) is another control variable. The current research on the beneficial effect lawyers have on their clients is not clear (Worden et al., 2018; Anderson and Heaton, 2012; Grisso and Schwartz, 2000; Sanborn, 1996; Feld, 1988; Guevara, Spohn, and Herz, 2004; Williams, 2013).

While the type of effect is unclear, lawyers have been empirically shown to have an effect on sentencing. Controlling for lawyer retainment will prevent any possible results skewed by the lawyer's involvement. Five hundred fourteen defendants (56.3%) retained a lawyer, while 399 defendants (43.7%) represented themselves. The type of attorney will also be included (0 = Public, 1 = Private attorney). From the cases that did use a lawyer, 437 defendants (85%) retained a private lawyer, and 77 defendants (15%) used a public lawyer. Prior crimes and prior DUI are the last two control variables. Prior crime is defined as any crime on a person's record that was at a misdemeanor B level or above. Basically, any crime that was not an infraction level crime (like a parking ticket) that occurred during a person's life before the sampled DUI case was counted as a prior crime. This includes prior DUI's. The separate measure of prior DUI's was created to account for any DUI's that would also count as a prior crime. A distinction

between prior crimes in general and prior DUI's is necessary to allow for the potential discovery of differences between defendants who have broken the law before and those who have specifically driven under the influence in the past.

Blood alcohol concentration (BAC) was not included as a measure. BAC was excluded because there was no narration of it on the public records where the data was been gathered. The information lacked distinction between BAC greater than .16, and instead had whether a person's BAC was simply greater than .08 BAC. This simply meant that the defendant met the BAC requirement for a DUI charge. The codes used for the control variables are listed in the Table 1. The frequency of occurrence for these variables found within the sample are displayed in Table 2.

Table 1*Coding Table*

Variables	Code Labels	Code
Transfer	Non-transfer	0
	Transfer	1
Prior DUI's	No	0
	Yes	1
Prior Crimes	No	0
	Yes	1
New DUI w/in 5 Years	No	0
	Yes	1
Lawyer Retained	No	0
	Yes	1
Type of Lawyer	Public	0
	Private	1
Gender	Female	0
	Male	1
Pled Reckless Driving	No	0
	Yes	1
Addiction Evaluation	No	0
	Yes	1
Victim Impact Panel	No	0
	Yes	1
Alternative Sentence Program	No	0
	Yes	1
Community Service	No	0
	Yes	1
Surrender Plates	No	0
	Yes	1
Addiction Evaluation 2nd DUI	No	0
	Yes	1
Victim Impact Panel 2nd DUI	No	0
	Yes	1
Alternative Sentence Program 2nd DUI	No	0
	Yes	1
Community Service 2nd DUI	No	0
	Yes	1
Surrendered Plates 2nd DUI	No	0
	Yes	1
Years Until Recidivism	Years	Continuous
Age at Arrest	Years	Continuous
Age at Conviction	Years	Continuous
Current Age	Years	Continuous
Jail Sentence	Days	Continuous
Sentence Fine	Dollars	Continuous
Jail Sentence 2 nd DUI	Days	Continuous
Sentence Fine 2 nd DUI	Dollars	Continuous

Table 2*Frequency Counts of Study Variables*

Variables	Code Labels	Frequency	Percent
Transfer	No	511	56.0
	Yes	402	44.0
Prior DUI's	No	717	78.5
	Yes	196	21.5
Prior Crimes	No	395	43.3
	Yes	518	56.7
New DUI w/in 5 Years	No	743	81.4
	Yes	170	18.6
Lawyer Retained	No	399	43.7
	Yes	514	56.3
Type of Lawyer	Public	77	15.0
	Private	437	85.0
Gender	Female	236	25.8
	Male	677	74.2
Pled Reckless Driving	No	733	80.3
	Yes	170	18.6
Addiction Evaluation	No	35	4.6
	Yes	726	95.4
Victim Impact Panel	No	354	46.5
	Yes	407	53.5
Alternative Sentence Program	No	692	90.9
	Yes	69	9.1
Community Service	No	729	95.8
	Yes	32	4.2
Surrender Plates	No	755	99.2
	Yes	6	.8
Addiction Evaluation 2nd DUI	No	11	7.2
	Yes	141	92.8
Victim Impact Panel 2nd DUI	No	95	62.5
	Yes	57	37.5
Alternative Sentence Program 2nd DUI	No	132	86.8
	Yes	20	13.2
Community Service 2nd DUI	No	146	96.0
	Yes	6	4.0
Surrendered Plates 2nd DUI	No	137	90.1
	Yes	15	9.9
		<u>Mean</u>	<u>Std. Deviation</u>
Years Until Recidivism	Years	2.18	1.46
Age at Arrest	Years	31.22	11.15
Age at Conviction	Years	31.51	11.19
Current Age	Years	44.85	11.18
Jail Sentence	Days	29.54	3.57
Sentence Fine	Dollars	617.26	175.08
Jail Sentence 2nd DUI	Days	29.41	4.19
Sentence Fine 2nd DUI	Dollars	896.32	242.82

Analysis

Descriptive statistics will be used to describe the variables in the study. Bivariate statistics will be employed to examine the zero order correlations among the various variables. Logistic regression will then be used to determine the log odds of recidivism based on whether the case is transferred, controlling for relevant variables. Ordinary least squares regression will be used to assess the associations involving the sentencing for fine amounts.

Several changes were made to the variables once the data were collected. First, the manner in which that the data were recorded on the publicly accessible websites lacked details for every variable. Blood alcohol concentration, driver's license suspension, and probation were not specifically written down as punishments resulting from a guilty DUI conviction. As there was no way to obtain this information, these variables were removed. The assignment of court ordered counseling did not occur within the sampled defendants who transferred to district court. This occurred for both first and second time DUI offenders. Without participation in both transfer and non-transfer groups, counseling will not be included in further analysis. Court ordered license plates seizures for first time DUI offenders also happened so few times (6/761 or .8%) that it will not be included in the analysis. Analyses of these variables were run using the Statistical Package for the Social Sciences.

RESULTS

Bivariate Findings

Table 3 examines whether there are pre-existing group differences on variables that have the potential to bias the estimates. This table displays the results of the crosstabulation calculations which include chi-square tests and odds ratios. Significance tests yielded non-significant results between the two groups. Gender, prior DUI, and prior crimes did not significantly vary between the transfer and non-transfer groups. Age at arrest for the two groups did differ significantly however. The data indicate that on average the transfer group was two years older at arrest than the non-transfer group. Since age is inversely correlated with crime, age at arrest will need to be controlled in the multivariate analysis.

Table 3

Crosstabulation Analysis of Transfer Status by Control Variables (N = 913)

Crosstabulation Calculations w/ Chi-Square Tests and Odds Ratios							
	Code	Transfer		Value	df	Likelihood Ratio	
		No	Yes			Asymptotic Significance (2-sided)	Odds Ratio
Gender	Male	74.8%	73.4%	.221	1	.638	1.074
Prior DUI	Yes	20.0%	23.6%	1.785	1	.182	1.239
Prior Crime	Yes	57.5%	55.5%	.389	1	.533	1.087

Independent Samples t-test							
	t	df	t-test for Equality of Means				
			Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
Age at Arrest	-2.843*	911	.005	-2.105	.740	-3.558	-.652

Transfer	N		Mean	Std. Deviation	Std. Error Mean
	No	511	30.294	10.410	.460
	Yes	402	32.400	11.930	.595

* $p < .05$

Examination of Research Question #1

Table 4 examines whether the two groups differ in sentencing severity, as posited by the first research question. Crosstabulation and chi-square test results for the sampled non-transfer (N = 511) and transfer (N = 402) groups show that DUI offenders who transfer to district court are less likely to receive a mandatory addiction evaluation ($\chi^2 = 3.897$, $df = 1$, $p = .048$). This result is slightly weakened by the fact that statistical significance was a cliff hanger at the alpha .05 level. Both groups were likely to receive an addiction evaluation over 90 percent of the time.

Assignment to a victim impact panel differed markedly between the two groups. Offenders who transferred to district court were significantly less likely to have as a condition of their sentence, attendance at a victim impact panel ($\chi^2 = 176.809$, $df = 1$, $p = .000$). The difference in this sentence structure was close to fifty percent. Mandatory participation in an alternative sentencing program was assigned less to first time DUI offenders who transferred to District Court ($\chi^2 = 74.444$, $df = 1$, $p = .000$). Although a statistical difference was found, court mandated participation in an alternative sentence program was not likely to be added to the criminal punishment, regardless of transfer status. Only 15.9% of offenders who did not transfer were assigned to an alternative sentencing program. Community service hours were found to be more likely mandated to first time DUI offenders who transferred to district court ($\chi^2 = 4.733$, $df = 1$, $p = .030$). Again, this punishment is not very likely. Transferred offenders only received this punishment 6.0% of the time compared to 2.8% for non-transfers, but it is still more likely to be assigned at the district level. Court ordered license plate seizure was ordered rarely and did not achieve statistical significance.

Table 4*Crosstabulation Calculations of Sentence Severity*

	Code	Transfer		Likelihood Ratio			
		No	Yes	Value	df	Asymp. Sig. (2-sided)	Odds Ratio
First DUI on Record							
Addiction Evaluation*	Yes	96.7%	93.7%	3.897	1	.048	1.990
Victim Impact Panel***	Yes	74.3%	26.7%	176.809	1	.000	7.925
Alternative Sentence Program***	Yes	15.9%	0.3%	74.444	1	.000	62.967
Community Service*	Yes	2.8%	6.0%	4.733	1	.030	2.219
Surrendered Plates	Yes	0.9%	0.6%	.274	1	.601	.638
Second DUI on Record							
Addiction Evaluation	Yes	94.0%	91.3%	.398	1	.528	1.486
Victim Impact Panel***	Yes	53.0%	18.8%	19.576	1	.000	4.861
Alternative Sentence Program***	Yes	22.9%	1.4%	18.615	1	.000	20.196
Community Service	Yes	3.6%	4.3%	.053	1	.818	1.213
Surrendered Plates	Yes	10.8%	8.7%	.197	1	.657	1.278
Control Variables							
Lawyer Retained***	Yes	21.9%	100.0%	713.728	1	.000	N/A
Type of Retained Lawyer***	Private	31.3%	100.0%	295.075	1	.000	N/A

* $p < .05$, ** $p < .01$, *** $p < .001$

This table also includes an examination of differences for second time DUI offenders. Second time DUI offenders have the potential to receive greater punishments than first time offenders based on North Dakota state statute. Separate analyses were conducted to ensure that punishments were not artificially inflated. Only assignment to a victim impact panel ($\chi^2 = 19.576$, $df = 1$, $p = .000$) and alternative sentence program ($\chi^2 = 18.615$, $df = 1$, $p = .000$) were statistically significant. Both punishments were less likely to be assigned to second time DUI offenders who transferred to district court. Similar to first time DUI offenders, defendants with a prior DUI on their record were less likely (18.8% vs. 53.0%) to be assigned to a victim impact panel when they transferred out of municipal court. For alternative sentence program assignment,

second time DUI offenders were about 20% less likely than non-transfers to having an alternative sentence program included in their sentence.

The control variables were not found to be statistically significant between the transferred and non-transferred cases. The exception would be whether a lawyer was retained for the case. The vast majority of non-transferred cases (78%) were pro se, or where the defendant represented themselves during the case. Some non-transferred cases had attorneys appointed to them (15%), while the remaining defendants (7%) had retained their own lawyers. This is in stark contrast to the 100% lawyer retention for every case that was transferred. Since all of the transferred cases had retained a lawyer, odds ratios could not be calculated for it.

Although Table 4 reveals significance for several variables, it does not control for other variables present in the analysis. Further analysis is required to determine whether the statistical significance identified in Table 4 is the result of the transfer to district and not due to other variables effecting the outcome. Logistic regression equations were used to make this determination. Each equation controlled for the same variables and rotated through the dependent variables present in the sentencing punishments.

Table 5 consists of the variables from Table 4 that were shown to be statistically significant. Specifically, addiction evaluation, victim impact panel, alternative sentence program, and community service were analyzed again using logistic regression. The results from the logistic regression equation reveal that several variables remain significant after controls. The association involving addiction evaluation and community service was no longer statistically significant once gender, age at arrest, prior DUIs, prior crimes, and lawyer retained were controlled for in the analysis. Victim impact panel and alternative sentence program placement both retained their statistical significance. The effect transferring had on the two previously

mentioned sentencing variables was inverse, indicating that non-transfers were more likely to receive a court order to attend VIP or an alternative sentence. Non-transfers were roughly 87% more likely than transfers to receive a sentence requiring VIP attendance and about 98% more likely to receive an alternative sentence. If first time DUI defendants decided to transfer to district court, they faced a statistically significant reduction in the likelihood of being sentenced to an alternative sentence program and/or victim impact panel.

Table 5

Logistic Regression Predicting the Log Odds of Sentencing for First Time DUI Defendants (N = 761)

Variable Evaluated	Variables in Equation	B	S.E.	Wald	df	p = .05	Odds Ratio
Addiction Evaluation							
	Gender (Female)	.107	.392	.074	1	.786	1.113
	Age at Arrest	-.018	.014	1.618	1	.203	.982
	Prior DUIs (No)	-.243	.677	.129	1	.720	.784
	Prior Crimes (No)	.076	.375	.041	1	.839	1.079
	Lawyer Retained (No)	.315	.777	.164	1	.686	1.370
	Transfer (Non-transfer)	-.901	.755	1.424	1	.233	.406
Victim Impact Panel							
	Gender (Female)	.056	.188	.088	1	.767	1.057
	Age at Arrest	-.009	.008	1.333	1	.248	.991
	Prior DUIs (No)	.215	.370	.339	1	.560	1.240
	Prior Crimes (No)	.171	.174	.960	1	.327	1.186
	Lawyer Retained (No)	-.006	.288	.000	1	.982	.994
	Transfer (Non-transfer)	-2.06	.289	50.97	1	.000***	.127
Alternative Sentence Program							
	Gender (Female)	.254	.320	.628	1	.428	1.289
	Age at Arrest	-.029	.016	3.255	1	.071	.971
	Prior DUIs (No)	.221	.605	.134	1	.715	1.247
	Prior Crimes (No)	.771	.285	7.337	1	.007**	2.163
	Lawyer Retained (No)	.068	.337	.040	1	.841	1.070
	Transfer (Non-transfer)	-4.164	1.046	15.844	1	.000***	.016
Community Service							
	Gender (Female)	-.605	.377	2.572	1	.109	.546
	Age at Arrest	-.035	.022	2.655	1	.103	.965
	Prior DUIs (No)	-.505	1.070	.221	1	.638	.603
	Prior Crimes (No)	.215	.377	.324	1	.569	1.239
	Lawyer Retained (No)	-.141	.789	.032	1	.858	.869
	Transfer (Non-transfer)	.980	.757	1.674	1	.196	2.664

* $p < .05$, ** $p < .01$, *** $p < .001$

Reference category in parentheses

The same method of analysis was used to obtain the results for Table 6. This table focuses on the logistic regression results found for the sentencing punishments for second time DUI defendants. The results slightly differed from those in Table 5, but there were also some similarities. Table 6 shows the same two punishments to be statistically significant. The odds ratios reveal that non-transfers to district court were roughly 75% more likely than transfers to attend a VIP and about 94% more likely to receive an alternative sentence. The differences between the sentencing of addiction evaluations and community service hours remained insignificant between municipal and district court for second time DUI defendants.

Table 6

Logistic Regression Predicting the Log Odds of Sentencing for Second Time DUI Defendants (N = 152)

Variable Evaluated	Variables in Equation	B	S.E.	Wald	df	p = .05	Odds Ratio
Addiction Eval. 2nd DUI							
	Gender (Female)	-19.034	7469.696	.000	1	.998	.000
	Age at Arrest	-.026	.026	1.004	1	.316	.974
	Prior DUIs (No)	-	-	-	-	-	-
	Prior Crimes (No)	-19.657	40192.930	.000	1	1.00	.000
	Lawyer Retained (No)	-1.049	.966	1.179	1	.278	.350
	Transfer (Non-transfer)	.042	.766	.003	1	.956	1.043
Victim Impact Panel 2nd DUI							
	Gender (Female)	.042	.485	.008	1	.930	1.043
	Age at Arrest	-.029	.017	2.732	1	.098	.972
	Prior DUIs (No)	-	-	-	-	-	-
	Prior Crimes (No)	19.187	40192.804	.000	1	1.00	2152720 61.600
	Lawyer Retained (No)	-.215	.460	.220	1	.639	.806
	Transfer (Non-transfer)	-1.404	.471	8.873	1	.003**	.246
Alternative Sentence Program 2nd DUI							
	Gender (Female)	-.012	.708	.000	1	.986	.988
	Age at Arrest	.000	.023	.000	1	.994	1.000
	Prior DUIs (No)	-	-	-	-	-	-
	Prior Crimes (No)	16.999	40191.990	.000	1	1.00	2412070 1.390
	Lawyer Retained (No)	-.159	.547	.084	1	.771	.853
	Transfer (Non-transfer)	-2.894	1.100	6.920	1	.009**	.055
Community Service 2nd DUI							
	Gender (Female)	-.892	.915	.952	1	.329	.410
	Age at Arrest	-.034	.044	.577	1	.447	.967
	Prior DUIs (No)	-	-	-	-	-	-
	Prior Crimes (No)	17.157	40192.960	.000	1	1.00	2825721 6.130
	Lawyer Retained (No)	-18.542	6923.856	.000	1	.998	.000
	Transfer (Non-transfer)	18.154	6923.856	.000	1	.998	7659200 0.870

* $p < .05$, ** $p < .01$, *** $p < .001$
Reference category in parentheses

Independent samples t-tests were run to analyze the sentence severity variables that were measured at an interval level. Specifically, jail time and fine issued for first and second time DUI offenders were analyzed. The results of these analyses are displayed in Table 7. Transfer status was the binary independent variable used in this test. Age at arrest and years until recidivism

were also included in the independent samples t-tests because they are both continuous variables and could not be analyzed through crosstabulations and chi-square tests. The independent samples t-tests test to see if there are any differences among two or more population means. When the test was run statistical differences in the transfer and non-transfer means arose. The three variables that displayed statistical significance were age at arrest ($t = -2.843$, $p = .005$), the fine for first time DUI offenders ($t = -4.561$, $p = .000$), and the fine for second time DUI offenders ($t = 6.481$, $p = .000$). These results indicate that non-transferred DUI cases had defendants who were younger than those who transferred to district court. Also, the fines imposed by the municipal courts for first time non-transfer offenders were significantly less than the district courts' fines. However, second time DUI offenders received a statistically significant reduction in fines when they transferred to district court.

The reversal of the fine amounts is an interesting finding. One would expect that the fine amounts would either be both positive or negative after transferring for first time or second time DUI defendants. The fact that the differences are inverted between how the fines change post-transfer also shows the importance of separating the defendants into two groups, first and second time DUI defendants. Besides possibly inflating the results of first time DUI defendants, creating two groups allows for the differences among the fines to be shown. The two groups show that there are differences among them, but further analysis is required.

Table 7*Mean Sentencing Severity Disparities among Continuous Variables*

	Levene's Test for Equality of Variances		t-test for Equality of Means						
	F	Sig.	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
								Lower	Upper
Years Until Recidivism									
Equal variances assumed	.162	.688	.768	168	.444	.177	.230	-.278	.632
Equal variances not assumed			.766	137.707	.445	.177	.231	-.280	.633
Age at Arrest									
Equal variances assumed	10.490	.001	-2.843	911	.005**	-2.105	.740	-3.558	-.652
Equal variances not assumed			-2.798	799.566	.005	-2.105	.752	-3.582	-.628
Sentence Jail									
Equal variances assumed	.497	.481	-.348	759	.728	-.091	.261	-.603	.422
Equal variances not assumed			-.353	741.717	.724	-.091	.258	-.597	.415
Sentence Fine									
Equal variances assumed	34.740	.000	-4.561	759	.000***	-57.599	12.630	-82.392	-32.805
Equal variances not assumed			-4.653	753.032	.000	-57.599	12.378	-81.899	-33.299
Sentence Jail 2nd DUI									
Equal variances assumed	2.238	.137	.744	150	.458	.508	.683	-.842	1.858
Equal variances not assumed			.716	112.578	.475	.508	.709	-.897	1.914
Sentence Fine 2nd DUI									
Equal variances assumed	1.028	.312	6.481	150	.000***	227.356	35.080	158.037	296.675
Equal variances not assumed			6.274	117.727	.000	227.356	36.239	155.592	299.120

* $p < .05$, ** $p < .01$, *** $p < .001$

Table 7 examines differences in jail time and fines, but this table does not test for differences, holding other variables constant. In order to address this issue, another analysis was run using ordinary least squares (OLS). The results of this analysis are displayed in Table 8. These results confirm the initial findings from Table 7. The differences in the fine amounts between municipal and district court remain statistically significant in Table 8. Specifically, the fine amounts increase for first time DUI defendants who transfer to district court. The fine

amounts for second time DUI defendants who transfer to district court decrease, however. These results support the previous analysis. Although statistical significance was reached, the R² value for both regressions are low. The R² value indicates the proportion of variation in the dependent variable that is predicted by the independent variable. The OLS regression for the fine amounts for first time DUI defendants had an R² value of .038. This R² value is quite low. Such a small number indicates that the variation between the means of first time DUI defendants is predicted by 3.8% of the independent variable. Similarly, the R² value for second time DUI defendant fines is .225. This indicates 22.5% of the variation between the fine means for second time DUI defendants can be predicted by the independent variables.

Table 8

Multiple Regression Analysis of Criminal Fines (N = 761; N = 152)

	Unstandardized Coefficients		Standardized Coefficients			95.0% Confidence Interval for B	
	B	Std. Dev.	Beta	t	Sig.	Lower	Upper
Fine – 1st DUI							
Constant	556.760	22.460		24.785	.000***	512.660	600.860
Gender	23.850	14.200	.061	1.679	.094	-4.030	51.730
Age at Arrest	.130	.580	.008	.225	.822	-1.010	1.270
Prior DUIs	18.320	28.030	.025	.654	.514	-36.700	73.340
Prior Crimes	24.140	13.180	.069	1.832	.067	-1.730	50.000
Lawyer Retained	7.130	21.590	.020	.330	.741	-35.260	49.520
Transfer	51.560	21.710	.146	2.375	.018*	8.950	94.170
R ²	.038						
Fine – 2nd DUI							
Constant	839.220	242.720		3.458	.001**	359.520	1318.920
Gender	33.710	45.960	.054	.734	.464	-57.120	124.550
Age at Arrest	.210	1.590	.010	.128	.898	-2.950	3.350
Prior DUIs	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Prior Crimes	135.830	221.480	.045	.613	.541	-301.890	573.550
Lawyer Retained	-26.990	49.170	-.052	-.549	.584	-124.180	70.190
Transfer	-206.660	46.780	-.425	-4.418	.000***	-299.120	-114.210
R ²	.225						

p* < .05, *p* < .01, ****p* < .001

Examination of Research Question #2

DUI recidivism is the focus of the second research question in this paper. The measure for recidivism is having a new DUI charge within five years of the original sampled DUI charge. When run through crosstabulations and chi-squared tests, the differences in DUI recidivism between transferred and non-transferred DUI cases was found to be not statistically significant ($\chi^2 = 2.317$, $df = 1$, $p = .128$). These results are displayed in Table 9. A non-significant result provides evidence that there is no difference in recidivism among transferred and non-transferred DUI cases. Nevertheless, these bivariate results could be suppressed by other variables not analyzed.

Table 9

Recidivism Crosstabulation Calculations

		Transfer		Likelihood Ratio			
		No	Yes	Value	df	Asymptotic Significance (2-sided)	Odds Ratio
2 nd Research Question DV							
New DUI w/in 5 years	Yes	20.4%	16.4%	2.317	1	.128	1.301

Logistic regression was run to determine the association between transfer status and five-year recidivism, controlling for other variables. The control variables being included are demographic characteristics (gender and age at arrest), criminal history (prior DUI's and prior crimes), and lawyer retention. The results of this analysis are displayed in Table 10. The analysis shows that gender is a borderline statistically significant factor. The coefficient informs us that males were slightly more likely than females to record another DUI within the five-year period. The transfer status variable lacked statistical significance. Of the variables measured in this study, only prior crimes proved to be statistically significant [$b = .750$, $p = .000$, Odds Ratio =

2.118]. This variable indicates that the odds of a DUI offender committing a new DUI within five years more than doubled if they had a prior criminal conviction on their record.

Table 10

Logistic Regression Predicting the Log Odds of Recidivism (N = 913)

Variables	B	Standard Error	Wald	p	Odds Ratio	95% C.I. for Odds Ratio Lower	Upper
Gender (Female)	.431	.222	3.771	.052	1.539	.996	2.379
Current Age Years	.046	.078	.342	.559	1.047	.898	1.221
Age at Arrest Years	-.054	.078	.470	.493	.948	.813	1.105
Prior DUI (No)	.304	.215	2.001	.157	1.356	.889	2.067
Prior Crimes (No)	.750	.210	12.747	.000***	2.118	1.403	3.198
Lawyer Retained (No)	-.185	.274	.457	.499	.831	.486	1.422
Transfer (Non-transfer)	-.116	.278	.175	.676	.890	.516	1.535
Constant	-2.595	1.141	5.171	.023*	.075		

* $p < .05$, ** $p < .01$, *** $p < .001$
Reference category in parentheses

Conclusion

There are several main takeaways from the results of this study. The first takeaway is that the sentencing punishments given in municipal court and district are roughly the same. Of course, there was evidence in this study supporting the differences between the two courts, yet there was also evidence that there were no differences between them. First time DUI defendants had differences among VIP and Alternative Sentence Program placement and higher fines when transferring to district court. Yet they also experienced no significant differences in jail time, addiction evaluation placement, and assigned community service hours. Second time DUI defendants experienced the same differences and similarities. The main point here is that this study is not saying that judges in municipal and district court are inconsistent. If anything, this study supports the notion that judges are consistent with their sentencing, barring a couple of

program assignments. The differences of which could easily be explained by a judge's belief in a program's effectiveness (i.e. victim impact panels or community service hours) in punishing or rehabilitating the defendant.

The second takeaway from this study is that the differences found in DUI punishments likely do not outweigh the financial burden that retaining a private lawyer for the transfer to district court would accrue. The average cost of retaining a lawyer is around \$2,000 in retainer fees. It is unlikely that any defendant is going to consider the potential reduction of being placed in a VIP or alternative sentence program over the cost of the retainer fees, regardless of the court fines. Especially when the retainer fees are coupled with the rise of insurance costs, it truly does not appear to make financial sense for first or second time DUI defendants to transfer to district court. However, if a defendant values their time and can afford the costs, transferring to district court could be justified.

The last takeaway from this study is that recidivism was shown to be unaffected by the transfer process. The differences in recidivism were not found to be statistically significant. Any concerns that were held fearing that DUI defendants who transfer do not learn their lesson and will drive drunk more often can be assuaged. DUI defendants who transfer to district court are no more likely to drive drunk than the DUI defendants who remain in municipal court.

DISCUSSION

Rational choice theory is the core theory used in this study. It states that all people act according to their own free will. The decisions people make freely are rational. Decisions that are made in accordance to the person's own best interest. Their best interest ends up being the decision that results in maximum pleasure and minimal pain for the person (Clarke and Cornish, 1985; Beccaria, 1764). The defendants included in the sample have adjudicative competence and are able to stand trial. The legal standard of adjudicative competence is the closest means of establishing rationality, without outright assuming it (Maroney, 2006). Demonstrating rationality is as simple as allowing defendants the choice to transfer their case from municipal to district court. The defendants can then choose which option will best suite their situation.

The option to appear before a jury is a right protected by the United States Constitution. Even though it is a right, a trial in front of a jury is not always the best choice. Bench trials with a judge in municipal court is sometimes the better choice. There are pros and cons to both bench and jury trials. Bench trials are quick and judges have plenty of experience in hearing new cases, but they risk a judge's singular opinion and potentially over emphasizing certain aspects of the case. Jury trials can round out biases and can possibly end as a hung jury, yet jury trials are more expensive and take longer to conclude compared to bench trials. These are the factors a defendant must consider before deciding whether or not to transfer to district court. Their rationality is displayed regardless of what they choose and how they justify their decision. This paper, however, does not examine rationality, rather how the transfer to district court affects punishments and recidivism.

In order to find out, we formed two research questions. The first question was are the DUI punishments administered at the district court level less than those administered at the

municipal court level? The results after the analyses are varied. The punishments of addiction evaluation, victim impact panel, and alternative sentence program assignment for first time DUI defendants were significantly less likely to be sentenced in district court. Community service hours, however, were shown to increase for first time DUI defendants. Even though statistical significance was achieved, the variations for both community service hours and addiction evaluation are likely not large enough to make a noticeable difference in sentencing. A defendant found guilty of a DUI who transferred to district court is still over 90% likely to attend a mandatory addiction evaluation and less than 10% likely to be sentenced to community service.

There was no evidence suggesting a difference in a jail time sentence between district and municipal court. Defendants were usually sentenced to thirty days in jail, had that sentence suspended, and were released within three days of the offense either through bail or adjudication. The fine attached to a guilty verdict was significantly larger in district court than in municipal court. Municipal court DUI fine usually ran at \$500 plus a \$25 victim fee if there was a victim. District court DUI fines typically were \$650 leaving at least a \$125 difference between fines.

The overall results for first time DUI offenders are mixed and do not necessarily suggest comprehensive evidence that DUI punishments are less at the district court level. The question that defendants have to ask themselves, and is also a subject for another paper, is whether the reduced likelihood of being sentenced to an addiction evaluation, victim impact panel, and alternative sentence program worth a \$125 fine increase, slight probability increase in being assigned community service hours, and enlarged lawyer costs. It would be irresponsible to give these punishments equal weight, so a first time DUI defendant will have to weigh the consequences themselves.

DUI defendants who already have one prior DUI on their record are subject to stronger punishments under the law. The separate analyses of second time DUI defendants yielded different results when compared to first time DUI defendants. Victim impact panel and alternative sentence program placement retained their significance, but addiction evaluation did not have a significant difference among transferred and non-transferred second time DUI cases. Sentenced jail time remained consistent and did not have significant differences among second time DUI defendants. The fines for these defendants were significantly different between transferred and non-transferred cases. Unlike first time defendants, defendants with a prior DUI who transferred to district court had their fines reduced. District court fines for a second DUI usually were \$750 while municipal fines were around \$1,000. It should be stated that notable variations exist between these fine values. There was overlap in the fine amounts where some district court fines were higher than the average municipal fines and where municipal fines sometimes fell below the district court average.

Even though the fines varied, the district court fines remain lower than municipal court fines and are statistically significant. These results show stronger evidence in favor of transferring to district court if the defendant is facing their second DUI charge. The likelihood of receiving the other types of punishment do not change, but a transfer is more likely to exclude participation in a victim impact panel, alternative sentence program, and a smaller fine. As lawyer retainment costs vary, a second-time DUI defendant will need to be decide whether benefits of transferring between the cost of retaining a lawyer.

In regards to our first research question, there were mixed results. First time DUI defendants were less likely to be assigned to certain programs if they transferred to district court, but they received a larger fine and a slight increase in likelihood to be sentenced to community

service. A second time DUI defendant showed stronger support for this research question. Significant reductions were found for two program assignments and a fine reduction. A conservative conclusion can be drawn by these results. Transferring to district court does receive more lenient sentences for second time DUI defendants. First time defendants receive a more lenient sentence, but their fine will be higher in they transfer. The jail sentence will stay the same regardless of transfer.

Lawyers also played a role during this process. Only 21.9% of the defendants who did not transfer had a lawyer, and, from that pool of lawyers, 69.7% public defenders. These numbers are in stark contrast with defendants who transferred to district court. Every single transferred case retained a private attorney. If anything can be said about these numbers, it is that private attorneys favor transferring over remaining in municipal court.

The second question examined was whether the transfer to district court results in a higher probability of DUI recidivism than non-transfer cases. The initial result of a crosstabulation calculation yielded a statically insignificant difference in recidivism. A separate logistic regression was run as well, and it came up with the same insignificant result. This is clear evidence to refute our second research question. It seems that transferring to district court from municipal does not increase the probability committing a new DUI offense within five years post-release of the original DUI. The only measure that did significantly affect recidivism was having a prior DUI on record. This is not surprising as previous criminal behavior is a strong predictor for future criminal behavior, yet defendants who had other crimes on their records was not a significant predictor for DUI recidivism.

The lack of significance in the recidivism measure also does not support the criminal mindset perspective. A criminal mindset perspective was purposed as a hypothesized explanation

for an increase in recidivism post-transfer. Criminal thought processes do everything they can to protect, advance, and maintain its criminal lifestyle (Walter, 1990). In the context of this paper, DUI defendants who do not want to go to jail will use the system to their advantage in order to receive the minimum amount of punishment for their actions. The smaller the punishment, then the quicker the defendant can get back to their criminal lifestyle. Under this perspective, it seemed likely that defendants who transfer are more criminally inclined, are looking for the least amount of punishment, will not receive any beneficial deterrence, and will go back to committing crimes once they are released. However, the lack of significant recidivism differences means that there is no evidence of this phenomenon existing within the data.

The results of this research can be applied multiple groups. These results can inform the decision-making process made by the defendants. The defendants ultimately make the decision to transfer courts. Knowing that first-time DUI defendants are statistically less to be assigned to certain programs but will receive a higher fine if they transfer to district court is information they can use when deciding to transfer. The same can be said for second-time DUI defendants. A decision to transfer can be made with greater surety based on the favorable transfer results in this study for second-time offenders. The results of this paper contribute to a very limited body of research that informs a defendant's decision process to transfer courts.

This paper can also inform the lawyers that recommend certain courses of action to their clients charged with a DUI. The results partially confirm the belief that lesser sentences are given at the district court level for DUI's. The reasons behind this difference is not clear. It could be a result of the jury in the district court or the advice given by the lawyers. It is no coincidence that all of the transferred cases had a lawyer retained for their case. A lawyer could potentially save their client around \$125 to not transfer if they are a first-time offender, or \$250 for second-time

offenders to transfer to district court. Since jail time does not change, the decision is mainly based on finances, how much time a person wants to spend in a program, or be less likely to be subject to an addiction evaluation. The current study is not suggesting variations do not exist in sentencing, but there is now statistical evidence to base decisions on. Lawyers can now use their anecdotal courtroom experience as well as the statistical evidence from this study to best represent their clients.

Another group that these results can be applied to are the courts within North Dakota. The data gathered for this study were from Fargo and West Fargo municipality. Other North Dakota municipal and district courts are subject to the same state laws as the sampled defendants. These results can be reasonably generalized to include the entire state of North Dakota. Recidivism not being affected by transferring courts means that even if statewide transfers to district court increases, recidivism should not also increase as a direct result of the transfers. If anything, the transfer process is a good example of constitutional mechanisms being upheld that do not negatively affect anyone.

An insignificant result regarding recidivism also provides evidence against the concept of the criminal mindset. Even though the court system was taken advantage of by the defendant, recidivism was not significantly different between transfer and non-transfer DUI defendants. The criminal mindset perspective would suggest that this type of court manipulation would reduce any deterring factors from punishment and any rehabilitative efforts that may have resulted in a conviction. The problem with the criminal mindset for this study is that, even though transfers occurred, jail time remained the same and the likelihood reduction for program assignment was statistically significant but relatively small. It would appear that the remaining deterring and rehabilitative effects from the punishments and programs that were kept in the criminal sentence

were enough to prevent those with a criminal mindset from reoffending at a greater amount than non-transferred defendants.

The topic of municipal court transfers to district court needs more research. Future studies conducted on this topic should take a deeper look at the conviction differences between bench and jury trials. The way that the current study was designed only dealt with DUI convictions and the accompanying punishments. Using DUI data from different states that have stronger DUI laws could also provide an interesting perspective. The results of such a study could be contrasted with the current study that used North Dakota's relatively lenient DUI laws. The dismissing of accompanying charges with the DUI charge could also provide insight into another reason to transfer courts. A common charge that accompanies a DUI charge that was dropped in the current study data was a minor in possession. Dropping a criminal charge in favor of only being prosecuted for a DUI charge and no other crime could potentially affect the decision-making process to transfer and is worthy of closer examination.

Limitations

Several limitations exist within this study. The first limitation is generalizability. The data gathered for this study was exclusively from Fargo and West Fargo, North Dakota criminal records. The population for this study is all DUI offenders, yet it is debatable whether or not DUI offenders in different states act the same way. This question could be the subject for future study.

The data is also limited by race. The public criminal records did not record race of the people charged with a DUI. This problem was covered in the best way possible by the systematic random sampling technique used to gather the data. The calculations were run with the assumption that race was equally distributed among the sample based on the race demographic distribution in the general population.

Several measures were also dropped from the analysis because of their absence within the data. The public records used for the current study did not have specific narration on blood alcohol concentration, probation assignment, and driver's license suspension. BAC has the potential to increase the punishments levied by the courts. If a defendant had a BAC greater than .16 then stronger punishments could be added into the criminal sentence. However, there was no documentation about the defendants BAC past the requisite .08 for a DUI on the public records. Probation assignment was a potential punishment for defendants found guilty of a DUI. This measure was removed from analysis because, like with BAC, probation was not explicitly written down in the public records. Without this narration, it would be impractical to include this measure. The suspension of a driver's license as a punishment measure was removed for the same reason. It is a potential punishment from a DUI guilty verdict, but there were no written instances on the public records of a driver's license being suspended. Without any cases found within the sampled cases, the measure was removed from the analysis. The removal of these measures is limiting because the lack of information reduces potential explanations for the sentences and what punishments are made in those sentences.

The reliance on public records is another limitation, particularly among the recidivism measure. DUI's are not always caught by the police. If there was no formal criminal charge made against the sampled defendant, then the DUI would not be counted as a new DUI within five years in the current study's design. This is an important limitation to note because the true recidivism amount among the sampled DUI defendants is likely greater than what is a part of the public record.

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