



Court Jurisdiction Transfer: Does Seeking a Different Court Venue affect Plea Reduction, Fines, and DUI Recidivism?

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Abstract: DUI defendants are sometimes faced with a decision to seek a jury trial in an effort to either have their charge reduced or be acquitted of drunk driving. In this study, a number of DUI defendants elected to have their case transferred to district court from municipal court in order to face a trial of their peers. A random sample of transfer and non-transfer court cases was examined to determine whether the decision to transfer 1) increased the probability of a reduced sentence, 2) reduced the fine amount, and 3) had implications for DUI recidivism. The data reveal that DUI defendants who transferred their case to district court were 11 times more likely than non-transferred cases to receive a reduced conviction to reckless driving. The reduction in conviction has implications for insurance premiums and license revocation. The group fine difference and DUI recidivism differences were not significant. Court transfer defendants who opted to retain an attorney benefited with lower fines, greater plea reduction, and even lower recidivism, although the latter two associations were not significant at the alpha .05 level.

Keywords: DUI, court transfer, plea reduction, recidivism

The rational choice perspective focuses on a core set of assumptions in which crime is chosen in a purposive and deliberate fashion (Clarke & Cornish, 1985). In this perspective, individuals choose criminal action that benefits them in terms of increasing their financial situation, reducing pain, and averting deprivation of freedoms. Under the rationality model, actors make decisions that best allow them to meet their needs while reducing costs and anticipating certain benefits from their actions (Williams & McShane, 2004).

Persons charged with a crime are also largely rational actors and attempt to make deals within the justice system that benefit them (Poythress *et al.*, 2002; Maroney, 2006). These benefits can result in dismissal of charges, non-guilty verdicts, or convictions that result in reduced penalties. Some persons charged with a crime have limited or constrained rationality to make rational decisions within the justice system (Opp, 1997). Nevertheless, one of the roles of the defense attorney is to seek information that will facilitate the best outcome for their client. Such is the case when defendants are faced with the opportunity to have their case transferred from one jurisdiction to another.

Most of the scholarly literature on court venue transfer have been published in the legal field (Steinberg, 1990). These requests are generally made by defense counsel as a means of reducing trial bias (Steinberg, 1990; Shahani, 2005). There is virtually no research in the criminal justice field that examines the decision to transfer a charge from municipal to district court. As a result, few if any criminal justice scholars have assessed the impact of the transfer decision on relevant outcomes such as plea reductions, sentencing and recidivism.

Municipal courts lack scholarly scrutiny because they constitute the lowest rung of the U.S. criminal court system (Natapoff, 2021). Nevertheless, Natapoff (2021) states that municipal courts require study because they process over 3.5 million criminal cases each year. However, they have also received heavy criticism because of their amateurish proceedings, arbitrary rulings, and lack of due process accorded to defendants (Horwitz, 1998; Natapoff, 2018). In some municipal jurisdictions, the judge is not an attorney (Natapoff, 2021). In addition, municipal courts are often self-funded, suggesting they generate revenue to sustain themselves (Logan & Wright, 2014).

It is in this vein that defense attorneys often encourage potential clients to transfer their case to district court. Defense attorneys may recommend district court (sometimes referred to as superior courts) transfer for any form of misdemeanor but especially for DUI cases where their client can request a jury trial, suppress evidence, and appeal their case as a result of a record kept of the proceedings. These options are traditionally unavailable in municipal court. Further, district courts facilitate challenges to law enforcement overreach, allowing defense attorneys to question law enforcement officials on the accuracy of their technology devices (e.g. breathalyzers) and field sobriety tests (Snortum *et al.* 1990; Johnston & Higgins, 1991).

Some defendants may wish to avoid a DUI conviction because insurance carriers substantially raise the cost of insurance premiums, depending on the gender, age, zip code, and prior driving record of the offender. For a DUI conviction, most courts or states require that an SR-22 form (Certificate of Financial Responsibility) be filed with the state as proof of insurance. This form is not required for a reckless driving conviction. The SR-22 provides notification to the insurance carrier that their client has

received a DUI conviction. The DUI conviction also carries with it administrative costs such as license revocation, defensive driving class, 24/7 sobriety program and addiction treatment evaluation.

To date, there exists little research on whether voluntary court transfers resulting from DUI charges facilitate more favorable outcomes for defendants and whether those outcomes have implications for further illegal behavior. In criminal court, adults have a choice at the district court level to choose a bench trial in lieu of a jury trial for any crime that is punishable with significant jail time (Frampton, 2012). This flexibility is not available in municipal (city) court. In municipal court, the defendant is tried via a bench trial. This may be important to the defendant because research has demonstrated that jury trials result in more favorable outcomes for defendants than having their case tried by a judge (Kalven & Zeisel, 1971; Eisenberg *et al.* 2005). To sway their client, defense attorneys may often cite the Kalven & Zeisel (1971) study in which the study authors examined over 3,576 criminal jury trials. In that study sitting judges were asked whether they agreed or disagreed with the verdict. Of the 455 DWI cases examined, jury leniency jumped from 13% for non-DWI crimes to 24% for DWI offenses. Judges stated that they would have acquitted in only 3% of the DWI cases where juries convicted, but in 27% of the DWI cases in which juries acquitted, judges would have convicted (Kalven & Zeisel, 1971).

This study has been replicated several times. In a smaller study, Bromley (1996) examined 66 DWI jury verdicts and asked judges about the nature of these verdicts. In 27% of the cases, judges communicated that they would have convicted where juries voted to acquit. In 2005, Eisenberg *et al.* questioned judges who oversaw felony jury trials in four locations. While the nature of the offense was not restricted to DWI's, the breakdown of judge-jury agreement was very similar to the original Kalven and Zeisel study with judges convicting in 19% of cases in which juries acquitted.

When faced with evidence that qualifies as middle evidentiary strength, judges tend to convict more than juries (Eisenberg *et al.* 2005). Because DUI cases sometimes hinge on evidence that may be questionable (Snortum *et al.* 1990), defendants seem willing to risk the additional cost of hiring an attorney in order to delay their case, hope for a plea agreement, obtain a reduced sentence, or be acquitted.

Attempts to attain a better legal deal by transferring court venue is a strategy that is sometimes communicated to the defendant by an attorney. The legal perceptions held by the attorney are often based on a judge's sentencing history but ultimately include the communication that a trial by jury may be more beneficial for their client than a bench trial (Gershowitz, 2011). There is some research suggesting that the nature of the charge may affect the benefits of transferring with more heinous crimes resulting in more

lenient sentences in bench trials, while less serious offenses such as DUI's experience greater leniency when tried in front of a jury (Brannen *et al.*, 2006; Salekin *et al.*, 2002; D'Angelo, 2007; Redding, 2011; Bushway & Piehl, 2001).

In the present study, all of the original DUI arrests result in cases being processed in municipal court. This court has jurisdiction over Class B misdemeanors and traffic violations. Municipal courts can also hear civil cases involving disputes not exceeding \$50,000 (State of North Dakota Courts, 2021b). District courts are larger staffed courts and can hear both criminal and civil cases. District courts try both felonies and misdemeanors and their larger caseload means lengthier delays for defendants. The severity of the crimes heard in district court make the court process a bit more formalized than municipal court. This means that there may be more procedural safeguards in place for defendants, required appearances by the defendant, and potential jury trials (E. Johnson, personal communication, October 20, 2022).

A defendant assigned to municipal court can appeal their placement and request that their case be transferred to district court. Voluntary court transfers can only occur one way, from municipal to district court. Constitutional protections allow for a jury trial to be held in district court for a misdemeanor level offense or higher when they face more than six months in jail (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.

A jury trial has potential benefits that could entice a defendant to transfer their case. For one, a defendant may not want their fate to be decided by one individual. A jury trial of peers allows for various people to potentially limit any biases that might influence the verdict. If the case is legally ambiguous, a jury may be more malleable than a judge. A jury may also identify with the defendant more than a judge, making the jury more sympathetic toward the defendant's case. In the Kalven and Zeisel (1971) study, some jurors sided with the DWI defendant because they too were drinkers and fretted about the ramifications on their own drinking and driving. There also exists the possibility that jurors may not trust the science underlying breathalyzers (Gershowitz, 2011). Finally, jury trials take more effort, time, and money to orchestrate. Prosecuting attorneys may not want to deal with the mechanics of a jury trial thereby allowing the defense attorney more leverage when negotiating a plea deal, likely resulting in a more favorable deal for the defendant. In this study, all of the transferred court defendants requested a jury trial. However, actual jury trials only transpired in roughly five percent of these cases (M. Friese, personal correspondence, January 20, 2024).

One reason why defendants may choose to have their case settled in municipal court relies on having their case handled quickly. District courts carry larger caseloads and hence, lengthier delays. In this study, the average time from DUI arrest to conviction

was 1.4 months for municipal court defendants and 6.2 months for district court defendants. Further, municipal court defendants may feel that they cannot afford an attorney or merely believe that hiring an attorney will not be cost effective (C. Aaland, personal correspondence, October, 19, 2023).

The literature on the benefit of retaining an attorney has produced mixed results (Peck & Beaudry-Cyr, 2016). While there is little research on the benefit of retaining an attorney for a DUI case, many defendants view hiring an attorney to be an essential element of the defense process (Williams, 2013). In this particular study, most of the defendants who had their case transferred to district court retained a private attorney (85%). We suspect these attorneys afforded their clients rational advice along the lines of negotiating for lower charges. Further, unlike felony cases DUI cases are generally handled in district court by inexperienced prosecutors who are handed the task of prosecuting low-level misdemeanors in which they are pitted against more seasoned defense attorneys (Leipold, 2005).

This study examines convictions, fines, and DUI recidivism rates of defendants charged with Drinking and Driving, some of whom sought and procured criminal court transfers from municipal to district court. Specifically, we test the proposition that transferring a case to district court will result in a lower conviction than remaining in municipal court. Specifically, whether the defendant successfully had their DUI reduced to reckless driving (sometimes referred to as wet reckless). Second, we assess whether defendants who have their cases transferred to district court receive lower fines than municipal court defendants. Last, we assess whether the transfer to district court has implications for the probability of another DUI. On this matter, we are uncertain whether hiring defense counsel will deter a future DUI or whether playing the justice system implies that defendants are trivializing their conviction and as a result might be more inclined to continue their drinking and driving behavior following their court outcome. Finally, we were interested in assessing the role of an attorney for the transfer group. Specifically, whether those hiring an attorney benefited from a lower fine, a plea reduction, and diminished probability of another DUI.

With these propositions in mind, we address the following research questions:

- Are defendants who transfer their DUI case to district court afforded a higher likelihood of a plea reduction relative to municipal court cases?
- Does transferring the DUI case to district court result in a lower fine relative to municipal court cases?
- Is there an association between transferring a DUI case to district court and DUI recidivism?
- Does retaining an attorney in the transfer group benefit them in terms of sentencing, plea reduction, and DUI recidivism?

Methods

The current study uses DUI cases initially assigned to municipal court. The DUI cases used for this research come from Cass County, North Dakota and include DUI arrests made in two cities in the county. At the time of the data collection, the total population of both cities was roughly 145,000. The defendants included 9,700 misdemeanor criminal arrests that occurred from 2006–2009. For purposes of this study we were only interested in DUI arrests which comprised 41 percent of this data set or 3,940 cases.

Sampling

From the 3,940 DUI cases, 177 cases were removed due to lack of information. Cases were separated into two groups consisting of 804 transfer and 2,555 non-transfer DUI cases. In order to reduce sample size and expedite data criminal data collection, we employed systematic sampling of every second transfer case and every fifth non-transfer case. The resulting sample sizes were 399 transfer cases and 510 non-transfer cases.

Measures

Court venue is the chief independent variable for the research questions. Municipal vs. district court participation is coded No = 0 if the case remained in municipal court and Yes = 1 if the case was transferred to district court. The dependent variable for the first research question is whether the DUI was pled down or not. For the second research question, we assess differences in Criminal sentencing by assessing the dollar amount levied in court fine. The outcome variable for the third research question is DUI recidivism within five years of the last DUI conviction. We employed a criminal record public data base for both Minnesota and North Dakota since the county in which defendants were arrested sits on a border with Minnesota. Capping the recidivism measure at five years was based on recidivism measures from other drug and alcohol studies (Jaffe *et al.*, 2012; Gilman and Walker, 2020).

Analysis

Analysis proceeds by first describing the characteristics and distribution of the study population. We then examine the bivariate distribution for the transfer and non-transfer group for ultimate conviction (pled down or not), fine amount, and DUI recidivism. Logistic regression is then employed to assess differences, controlling for gender, age at arrest and prior criminal record. Finally, we examine whether retaining an attorney benefited the transfer group versus transfers that did not retain an attorney.

Results

Table 1 displays the frequency counts for the variables in this study. Forty-four percent of the sample (N = 399) requested to have their case transferred to district court in order to attain a jury trial. Seventy-four percent of the sample was male and the average age at the time of arrest was 31.2 years (not shown). Age of arrest ranged from 18-77. Twenty-four percent of the sample had recorded a previous DUI and 57% recorded a previous criminal conviction. An attorney was retained in fifty percent of these cases and a jury trial was requested by 37% of the sample. Twenty percent of these DUI cases resulted in a plea reduction, mostly pled down to reckless driving. The average court fine paid by these defendants was \$653. Over a fifth of the sample (21%) acquired another DUI within the five year period.

Table 1: Distribution of sample (N = 909)

<i>Transferred</i>	<i>N</i>	<i>Percent</i>
Yes	399	43.9
No	510	56.1
Gender		
Male	673	74.0
Female	236	26.0
Prior DUI		
Yes	216	23.8
No	693	76.2
Prior Criminal Conviction		
Yes	515	56.7
No	394	43.3
Attorney Retained		
Yes	452	49.7
No	457	50.3
Jury Trial		
Yes	337	84.5
No	572	15.5
Plea Reduction		
Yes	185	20.4
No	724	79.6
DUI Recidivist		
Yes	193	21.2
No	716	78.8

We wished to assess whether the decision to transfer was affected by gender, having a prior DUI or prior criminal conviction. These metrics would likely have implications for the decision to hire an attorney, working out a plea reduction, and possibly for

acquiring another DUI. The unadjusted odds show that gender was not significant. Females were slightly more likely than males (45% vs. 44%) to request a transfer to district court but the difference was not significant at the alpha .05 level. The court transfer group was 7.4% more likely to have recorded a previous DUI but this difference too was not significant at the alpha .05 level. Recording a prior criminal conviction was not associated with a transfer request. The only variable that produced a significant difference was age. The transfer group was slightly older than the non-transfer group with a mean difference of 2.2 years ($t = 2.93, p = .003$ (two sided)).

In Table 2 we assess the bivariate differences between the transfer and non-transfer group in terms of plea reduction, fine amount, and DUI recidivism. There was a large difference between the groups in plea reduction outcome. Thirty-nine percent of the transfer group successfully had their DUI pled down, mostly to reckless driving, compared to 6% for the non-transfer group (likelihood ratio = 161.9, 1 df, $p < .001$). Expressed as an odds ratio, transferred defendants were almost 11 times more likely than non-transferred defendants to receive a plea reduction. The average fine for the groups did not reach statistical significance (two-sided). Non-transferred defendants received an average fine in municipal court of \$655 versus \$650 for the transfer group ($t = .289, p = .773$). The five year DUI conviction rates also failed to reach significance at the alpha .05 level. Twenty-two percent of non-transfer defendants recorded another DUI compared to 19.5% of transfer defendants (likelihood ratio = 1.21, 1 df, $p = .271$).

Table 2: Unadjusted odds ratios – Transfer vs. Non-transfer group

	<i>Transfer Group</i> (N's/%)	<i>Non-transfer Group</i> (N's/%)	<i>Odds Ratio</i>	<i>Probability</i>
Gender				
Male	293/43.5%	380/56.5%		
Female	106/44.9%	130/55.1%	1.05	.714
Prior DUI				
Yes	107/49.5%	109/50.5%	1.34	.056
No	292/42.1%	401/57.9%		
Prior Criminal Conviction				
Yes	221/42.9%	294/57.1%		
No	178/45.2%	216/54.8%	1.09	.495
Age at arrest	32.4	30.2		.003

Because this difference could be suppressed by group differences, in table three we examined the log odds of these associations. In model one we entered gender and age at arrest. In model two, we entered prior DUI and in model three, we entered the transfer variable. Like the bivariate association, there was no statistical difference in fine

amount between the two groups, controlling for relevant co-variates (not shown). When examining whether the defendant received a plea reduction, there was no advantage for any group by gender or age. In model two, the coefficient for prior DUI was negative indicating that defendants without a prior DUI were significantly more likely to have their conviction pled down to reckless driving than those with a prior DUI. In model three, we observe that the court transfer group also benefitted with a lesser conviction. Controlling for gender, age and prior DUI, the transfer group was 11.2 times more likely to have their DUI pled down to a lesser charge ($b = 2.41$, $S.E. = .22$, $p < .001$). Controls for gender, age and prior criminal conviction produced similar results (table not shown). Here the transfer group recorded odds that were 10.7 times higher than the non-transfer group of receiving a lower conviction outcome ($b = 2.37$, $S.E. = .22$, $p < .001$).

We then examined whether one group was more likely to record another DUI within the five year period. Here there were no significant differences between the groups, controlling first for prior DUI ($b = -.208$, $S.E. = .17$) or for prior criminal conviction ($b = -.165$, $S.E. = .17$). In both cases however, the non-transfer group was more likely to record another DUI. While these differences were not significant at the alpha .05 level, they are at least suggestive that the transfer group might have benefited from retaining an attorney, either to avoid further costs to them or in terms of receiving lawyerly advice/admonishment.

Table 3: Logistic Regression of Plea Reduction on Control Measures and Court Transfer (N = 909)

	Model 1		Model 2		Model 3	
	B (S.E.)	Odds Ratio	B (S.E.)	Odds Ratio	B (S.E.)	Odds Ratio
Gender (Female = reference category)						
Male	.061 (.19)	1.06	.101 (.19)	1.1	.181 (.21)	1.2
Age						
	.010 (.01)	1.01	.012 (.01)	1.01	.01 (.01)	1.0
Prior DUI (No = reference category)						
Yes			-.449 (.21)*	.64	-.684(.23)**	.50
Transferred (No = Reference category)						
District Court Group					2.41(.22)***	11.2
Constant	-1.73		-1.72		-2.96	11
Model Chi-square	2.17		6.98		171.9	

*p < .05

** p < .01

*** p < .001

Eighty-five percent (N = 340) of the transfer group retained an attorney to handle their DUI case. We were interested in whether this group benefited relative to the non-retained attorney group in terms of fine amount, plea reduction, and DUI recidivism. Table four reveals that the fine amount for the attorney retention group was significantly lower by roughly \$56 relative to the non-attorney group ($t = 2.2, p = .026$). The attorney retention group also benefited by having a higher level of plea reduction. Forty-one percent of the attorney retention group had their DUI reduced to reckless driving compared to 29% for the non-attorney retention group. While this difference was not significant at the alpha .05 level, with a smaller sample size (N = 399) the difference was significant at the alpha .10 level (likelihood ratio = 3.18, 1 df, $p = .074$). There also appears to be a slight difference between the groups in terms of acquiring another DUI but this difference was not significant at the alpha .10 level (18.5% vs. 25.4%). Hence, retaining an attorney paid dividends for this group in terms of a lower fine and a reduction in charge. Whether this difference was counterbalanced by the roughly \$2,500 in attorney fees cannot be assessed with this data.

Table 4: Bivariate Outcome Associations by Attorney Retention Status, Transfer Group only (N = 399)

	<i>Lawyer Retained</i>		
	<i>No</i>	<i>Yes</i>	
Mean Fine Amount **	\$700	\$643	$t = 2.23, 329 \text{ df}, p = .026$
Plea Reduction*	28.8%	40.9%	$\text{chi-square} = 3.18, 1 \text{ df}, p = .074$
Five year DUI recidivism	25.4%	18.5%	$\text{chi-square} = 1.44, 1 \text{ df}, p = .230$

* $p < .10$

** $p < .05$

Discussion

Some defendants in this study made a rational choice to have their DUI case transferred from municipal to district court. This decision was made under the guise that they wished to have a jury of their peers hear their case with the advice and counsel of an attorney. Previous research has suggested that lesser offenses when tried in front of a jury result in greater leniency (Brannen *et al.* 2006; Bushway & Piehl, 2001). Further, attorneys are likely to advise their clients that cases tried in front of a judge are more likely to result in guilty verdicts (Kalven & Zeisel, 1971; Bromley, 1996). Hence, we wished to assess whether having a DUI case heard with the judicial threat of a jury trial and the retention of an attorney would benefit defendants.

Our results show that defendants who transfer their DUI case to district court are more likely to be convicted of reckless driving relative to the non-transfer group. The

plea reduction was statistically significant with the transfer group being roughly 11 times more likely to receive the lower conviction. What this means for defendants is fewer points deducted from their driving record and no requirement to file an SR-22 form. The website of DUI laws and penalties in North Dakota indicate that a DUI conviction generally carries a 79% increase in insurance premiums. At the administrative level, defendants convicted of a DUI are also faced with a mandatory 91 day license revocation (180 days for a BAC level that exceeds .18). Reckless driving convictions generally do not carry an administrative license suspension unless the driver has accumulated 14 points on their driving record. Finally, DUI convictions can result in further costs such as attending a defensive driving class, being evaluated for substance disorder, and participating in a 24/7 sobriety program.

There were no group differences in fine assessment nor were there significant group differences toward recording another DUI. Still, both patterns were in a direction that favored the transfer group. In light of our data revealing that the court transfer group recorded a 7.4% higher likelihood of receiving a previous DUI, the net 10 percent difference suggests that perhaps the retention of legal counsel may have deterred the transfer group from recording another DUI.

When we examined differences for the transfer group only, retaining an attorney reduced the fine amount by \$56 relative to defendants who did not retain an attorney. The attorney retention group also were 12 percent more likely than the non-attorney group to have their DUI reduced to reckless driving, although these differences were only significant at the alpha .10 level. There were no differences cited between the groups in terms of recording another DUI five years later.

There are several limitations that require discussion. First, we lack socioeconomic data on these defendants. It is likely that the transfer group was more financially capable of hiring an attorney to defend their case than the non-transfer group. While DUI convictions tend to be higher at the lower end of the socioeconomic spectrum (Moller *et al.* 2015; Oksanen *et al.* 2014) our data show that the transfer group was more likely to record a previous DUI, suggesting that if anything, the data might be biased towards the transfer group receiving another DUI. We also lack other measures that could have differentiated the two groups such as prior levels of alcohol use and prior chemical dependency treatment. Finally, we were restricted to examining recidivism differences under the assumption that all 909 court participants maintained their residency in one of the two states. Should one group have exhibited more out of state mobility than the other, this would skew the recidivism data.

We can still conclude that exiting municipal court and retaining an attorney in district court pays dividends for DUI defendants. While the roughly \$2500 attorney fee might prove burdensome up front, the short and long term benefits of the reduced

charge and avoidance of higher insurance premiums and driving related administrative obstacles may be worth the cost.

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