

January 12, 2021

Testimony to the **House Judiciary Committee**

By Jackson Lofgren on behalf of the ND Association of Criminal Defense Lawyers

HB 1104-Neutral Testimony

Chairman Klemin and Committee Members:

My name is Jackson Lofgren and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers who dedicate at least a portion of their practice to criminal defense. The mission of the NDACDL is “to promote justice and due process...” and “...promote the proper and fair administration of criminal justice within the State of North Dakota. We are offering neutral testimony regarding HB 1104

During the “Tough on Crime” era of the 1990s the Federal government offered states incentive grants to expand their prison capacity and ensure certain offenders served longer sentences. With Federal money to be had North Dakota enacted an eighty-five percent requirement for “violent offenses” in 1995 with the adoption of N.D.C.C. §12.1-32-09.1.

The sentencing policies of the 1980s and 1990s have caused the American prison population to increase by 222% from 1980 to 2010. Currently, there are roughly 2.3 million Americans in prison with another 4.6 million under probation or parole supervision. The United States incarcerates far more individuals than any other country. What is even more problematic is there is little evidence to support the idea that longer sentences promote deterrence or reduce recidivism rates.

We therefore support HB 1104 to the extent it provides individuals convicted of offenses under N.D.C.C. §12.1-32-09.1 with the opportunity to see the Parole Board earlier. The prospect of a meaningful parole will hopefully provide incentive for these individuals to avail themselves of the programming available through the North Dakota Department of Corrections and Rehabilitation and leave prison with the tools they need.

Our only concern with the bill is the language in Section 2 which applies the proposed changes retroactively. House Bill 1104 adds several new offenses to the list of “violent offenses” under N.D.C.C. §12.1-32-09.1. For offenses currently subject to the eighty-five percent requirement this is not an issue. For the new offenses added to N.D.C.C. §12.1-32-09.1 the retroactive application would likely be unconstitutional under the ex post facto clause of the United States Constitution. The United States Supreme Court has found statutes which retroactively limit a sentenced inmate’s ability to earn early release are unconstitutional. See Weaver v. Graham, 450 U.S. 24, 101 S. Ct. 960 (1981).

Thank You,

/s/ Jackson J. Lofgren

Jackson Lofgren