



NORTH DAKOTA HOUSE OF REPRESENTATIVES

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COMMITTEES:

Human Services
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TESTIMONY IN SUPPORT OF HB 1181

Defendant's Fitness to Proceed

Chairman Larson and members of the Senate Judiciary Committee,

For the record, my name is Representative Kathy Skroch, District 26 of North Dakota. I appear before you today to introduce House Bill 1181. To be clear, I am not an attorney. There are others who will be testifying in support of House Bill 1181 who will be able to provide testimony with an in-depth understanding of this proposed legislation.

HB 1181 creates a new section in NDCC related to the fitness of an individual to proceed in court. The bill was crafted through a collaborative process working within the North Dakota Supreme Court Taskforce on Mental Illness, to which I have been appointed. This task force was called for, by then Chief Justice Gerald VandeWalle. The group was tasked with address the need for clear protocols and procedures, currently lacking or unclear in code, when persons suffering with mental illness come before the court. To avoid unnecessary delays, this bill establishes timelines for processing individuals suspected of having competency and mental illness deficiencies. The primary objective of this bill is to ensure a proper and timely assessment is completed to verify the cognitive capacity of a defendant to ensure fitness to proceed.

These suggested timelines were heavily debated among those who provided input. The task force members worked with lawyers, representatives from stakeholder groups and the professionals working in this field. Much research and effort were put into the bill draft prior to submitting it to the NDLC for the first draft.

Those behind the bill, in part, are states attorneys, defense attorneys, judges, and social service agencies who have struggled with the lack of clarity in how to process and proceed in these cases when dealing with persons who may have broken laws while mentally ill. With the recommended changes proposed in the bill, uniform procedures will be established to prevent uncertainty and establish best practices.

Part of the discussion must be about the devastating harm that occurs to persons suffering with mental illness when convicted for crimes for which there was lack of culpability due to mental illness. Options were considered to avoid criminality which may have devastating impacts on an individual's access to housing, credit, employment, college loans and so forth that result from criminal records. Additionally, this bill establishes more clearly define timelines and intent in the law.

Section 5, page 5, lines 2 through 8, were discussed at length prior to drafting knowing these would be debated in legislative committees. This subsection addresses the option of a court to dismiss a proceeding with prejudice. The pros and cons of dismissal "**with prejudice**" may be discussed. There are solid reasons for wanting this option, but it should not be presumed that every case would be dismissed depending on each individual situation. The definition for "**clear and convincing evidence**" was included to prevent ambiguity.

I will stand for questions; however, I believe there are others who will testify who are much more capable of answering your legal questions.

Thank you, Madam Chair and members of the Senate Judiciary Committee.

Representative Kathy Skroch
District 26
Human Services Committee and Interim
Ag Committee and Interim
ND Supreme Court Task Force on Mental Illness