

January 18, 2021

Testimony to the **House Judiciary Committee**

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

Testimony In Support of HB 1123

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 **support** HB 1123.

Most Americans recognize our current pretrial system must change. The United States is one of the only countries with a cash bail system requiring the accused to give the government money to remain free until his or her day in court. Pretrial detainees make up more than 70% of the national jail population. This equates to approximately 536,000 people at a cost to American taxpayers of around \$14 billion each year.

North Dakota is no exception. Online records indicated on the morning of January 16, 2021, there were 253 inmates in the Burleigh-Morton Detention. More than half of these individuals appeared to be pre-trial detainees. Often it can take six months or more for a case to work its way through our court system. That can mean six months where an individual who cannot make bail is without a job, incurs mounting debt, and risks having their children placed into the foster care system. All while presumed innocent.

This will be my fifteenth year as an attorney in North Dakota. Half of that time was spent as a government lawyer and prosecutor. For the last seven years I have been in private practice focused on criminal defense. In my opinion the two biggest causes of innocent people pleading guilty in our system are cash bonds and mandatory minimum sentences. I cannot count the number of times I have seen an indigent person appear in custody for a misdemeanor, ask for a lawyer and plead not guilty, then ask to change that plea to guilty after being told they will need to post an amount they do not have to bond out of jail. How many of these people were innocent or had a defense? Unfortunately, they gave up their rights and defenses because a guilty plea was the key to the jail house door.

Unfortunately, the problems caused by cash bonds are not limited to the indigent. Cash bonds in the \$10,000-\$25,000 range are fairly common with bond amounts in some cases going into six figures. Recently, there was a \$75,000 cash bond set for a woman in her mid-fifties with no criminal history on a class C felony offense subject to presumptive probation. After obtaining an attorney she was able to get her bond lowered to an amount requiring her to post \$1,000.00. But, she sat in jail for over two weeks. What if she did not have the money for an attorney and did not qualify for court appointed counsel? Would she have pled guilty to get out of jail?

If our current cash bail system causes one innocent person to plead guilty we need to change it. For these reasons we support **HB 1123** and ask for a **DO PASS** recommendation from this Committee.

Thank You,

Jackson J. Lofgren

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