HB 1123
House Judiciary Committee
January 18, 2021
Testimony of Travis W. Finck, Executive Director, NDCLCI

Chairman Klemin, members of the House Judiciary Committee, my name is Travis Finck and I am the executive director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense in North Dakota. I rise today on behalf of the Commission to provide testimony in support of HB 1123.

The Constitution of the United States of America guarantees individuals charged with a crime the right to due process of law. Inherent within due process is the right be presumed innocent until proven guilty. This is a basic tenant of American Jurisprudence. The Constitution of the State of North Dakota provides that all persons shall be made bailable by sufficient surety. Further, Court rules provide a magistrate must order the person released pending trial on the person's personal recognizance or on execution of an unsecured appearance bond in an amount specified by the magistrate, unless the magistrate determines, in the exercise of the magistrate's discretion, that unconditional release will not reasonably assure the appearance of the person as required. Despite the Constitutional requirements, bail schedules have been developed and implemented across the state. The Bail schedules allow a defendant arrested of a specific charge to post the listed bail for that crime and be released from jail. If you are unable to post the bond/bail, the defendant is brought before the Court to have a bail set. In some circumstances, this current practice runs dangerously close to being afoul of the United States' Supreme Court case law holding incarceration of defendants solely because of their inability to pay for their release, whether through fines, fees or a cash bond violates the Equal Protection Clause of the 14th Amendment.

Bail should be used as a shield to ensure future appearance and protect the community not as a sword to force individuals to plead guilty. Prior to my time in administration of the indigent defense system, I served as a public defender. It is an unfortunate reality in this great state that an individual pleads guilty simply to get out of jail because they don't have money to

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post a cash bail. However, I can tell you with certainty it happened many times when I was practicing in the trenches and undoubtedly continues today.

Pretrial incarceration accounts for the majority of county jail inmate populations. According to the 2018 Jail Inmates statistics released in March of 2020 by the United States Bureau of Justice Statistics, nationwide only 34% of persons who were in jail had been or were awaiting sentence. This creates a burgeoning pretrial population. This can cause extreme difficulties for counties to manage their populations. A perfect example is that of the positive reaction of jails in response to the COVID 19 pandemic. County jails, prosecutors and the courts implemented population plans to release low level offenders to keep fewer people coming in and out of the facilities. The policies that were implemented at the outset of Covid 19 and are very similar to the Legislative direction given in HB 1123.

HB 1123 is a giant step in the right direction for bail reform in North Dakota. Last session the Legislative Assembly instituted and funded a pilot program for a pre-trial release program. This bill and that program are smart steps in criminal justice and bail reform. The Commission is support of criminal justice reform that not only meets our constitutional requirements of due process, but also protects the community. It is our belief this bill achieves exactly that.

Former U. S. Supreme Court Chief Justice William Rehnquist once said "In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception". With that in mind Mr. Chairman, on behalf of the commission, we respectfully request a DO PASS recommendation.

Respectfully Submitted:

Travis W. Finck
Executive Director, NDCLCI

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