

January 26, 2021

Testimony to the **House Judiciary Committee**

Submitted By: Jesse Walstad on behalf of the ND Association of Criminal Defense Lawyers

Testimony **in Support of H.B. 1302**

Chairmen and Members of the House Judiciary Committee:

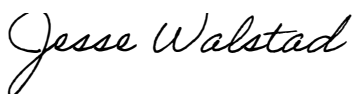
My name is Jesse Walstad and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers throughout our state who dedicate a portion of their practice to criminal defense. The mission of the NDACDL is “to promote justice and due process” and to “promote the proper and fair administration of criminal justice within the State of North Dakota.” With that mission in mind, the NDACDL **supports H.B. 1302** and recommends a **DO PASS** from the House Judiciary Committee.

The civil compromise of certain misdemeanors and infractions under Sections 29-01-16 through 29-01-19, N.D.C.C., codifies a limited form of restorative justice. Restorative justice promotes restoration of victims of minor crime and encourages offender accountability and reformation. In doing so, the statute builds a sense of community and collaboration by seeking collaborative outcomes that bear a stronger resemblance to civil remedies than criminal punishment. The civil compromise statute was originally codified in the Code of Criminal Procedure of 1877.¹ Section 29-01-19, N.D.C.C., was amended by the 2003 Legislative Assembly to condition the remedy on the “consent of the state.”² The practical import of the 2003 amendment is that prosecutors must approve a civil compromise before a judge can grant relief.

H.B. 1302 would amend the statute to remove the prosecutor consent requirement. Doing so would restore the victim-centric nature of this limited remedy to an agreement between the necessary stake holders: the victim, the offender, and the judge. Once a victim and repentant offender have reached an agreement to make the victim whole, the parties could present the agreement to the judge. The statute affords our courts broad discretion to grant or deny civil compromise relief under the statute which serves as a check to ensure just and fair outcomes. Because the civil compromise of this limited class of misdemeanor and infraction offenses focuses on correcting the private wrongs done to specific victims, the state’s interest in the prosecution of a public wrong is outweighed by the expedient relief to the specific victim.

While the victim-centric civil compromise predates North Dakota’s statehood, access to the remedy is increasingly important today. The proliferation of criminal laws covering matters that were previously addressed solely by private rights of action increases the importance of access to a civil compromise remedy. Further, our court system and prosecutors’ offices bear the ever increasing burden of a growing criminal justice system. Greater accessibility to the civil compromise remedy helps reduce this burden by allowing efficient and non-litigious resolution of minor cases. A more accessible civil compromise remedy would also reduce the burden criminal prosecution places on the citizens of our communities who would otherwise be required to serve on juries and as witnesses. Most importantly it gives the victim a greater voice in the restoration of their own private injury and encourages the genuine accountability of the repentant offender. Accordingly, the NDACDL urges a **DO PASS** on H.B. 1302.

Respectfully,



Jesse Walstad

¹ C. Crim. P. 1877, § 524.

² S.L. 2003, ch. 273, § 2.