

Engrossed Senate Bill 2166
Senate Judiciary Committee
March 10, 2021
Neutral Testimony of Todd N. Ewell
Deputy Director, NDCLCI

Chairman Klemin, members of the House Judiciary Committee, my name is Todd Ewell and I am the deputy director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota. On behalf of the Commission on Legal Counsel, I rise today to provide neutral testimony on Engrossed Senate Bill 2166.

The Commission expressed concerns when discussing this bill after the passage through the Senate. The first issue of concern is the potential costs to defend additional felony cases. We have not seen any data suggesting how big of an issue this may ultimately present, but felony cases clearly cost more money to the taxpayer. According to an article in the Minot Daily News written in 2019, citing a North Dakota Department of Corrections and Rehabilitation spokesperson, the cost of incarceration is approximately \$43,000 per year. Sentencing an individual for to up to five years in prison for repeatedly taking items of less than \$500 will be costly.

Several presenters to the Senate Judiciary Committee set forth examples of a more violent trend in retail theft. As the former Supervising Attorney of the Bismarck Mandan Public Defender Office, I would point out that our existing laws can address these issues.

Examples posed to the Senate Judiciary Committee depicted thieves violently running out of a store, running into people, or threatening store clerks. Those actions are no longer the crime of theft – these are examples of Robbery.

Under NDCC 12.1-22-01, A person is guilty of robbery if, in the course of committing a theft, he inflicts or attempts to inflict bodily injury upon another or threatens or menaces another with imminent bodily injury.

Please note that no dollar amount is needed.

Another point discussed in front of the Senate Judiciary Committee is the concept that individuals are aware of the threshold amount required to trigger a felony arrest. State's

Attorneys do have the ability to consolidate theft offenses over a period of time and charge the aggregate dollar amount.

NDCC 12.1-23-04 paragraph 7 states:

...Thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be charged as one offense and the amounts proved to have been stolen may be aggregated in determining the grade of the offense.

The Commission brings this neutral testimony to raise these concerns.

Respectfully Submitted:



Todd N. Ewell

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