

HB 1492
68th Legislative Assembly
House Judiciary Committee
February 1, 2023
Testimony of Travis W. Finck, Executive Director, NDCLCI

Chairman Klemin, Vice Chair Karls, 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 delivery of public defense services in North Dakota. The Commission wishes to provide the following neutral testimony.

HB 1492 is in response to the North Dakota Supreme Court decision in *State v. Castleman*. In *Castleman*, the court reviewed what constitutes a mental injury for purposes of child abuse and neglect. *Castleman* provides ““mental injury” as used in § 14-09-22(1) requires mental suffering and trauma that has some lasting, nontransitory effect. This may be shown by evidence of a medical diagnosis, counseling, behavioral changes, or other lasting effects of psychological, emotional, or other mental trauma. Without a clear statutory expression of intent to criminalize willfully causing a child to feel fear, to cry, or to suffer other temporary mental discomfort that might conceivably fall within mental or emotional harm, we cannot conclude that the plain meaning of mental injury sweeps so broadly.” *State v. Castleman*, 2022 ND 7, ¶ 16. Thus, clarification in statute requiring evidence of “observable or substantial impairment in the child’s ability to function within a normal range of performance and behavior with due regard to the child’s culture” is an appropriate definition in code of mental injury.

While the Commission supports HB 1492 in its definition of observable and substantial, the Commission has concerns regarding the inclusion of witnessing acts of domestic violence. This provision could serve to springboard all acts of domestic violence, currently misdemeanor offenses, to Class C or Class B or even Class A felonies.

Chairman Klemin, members of the House Judiciary, I stand for any questions.

Respectfully Submitted:



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