

January 31, 2023  
Testimony to the **House Judiciary Committee**  
By Jackson J. Lofgren  
**Testimony in Opposition to H.B. 1492**

Chairman Klemin and Members of the House Judiciary Committee:

My name is Jackson Lofgren and I reside in District 35. I have had the pleasure of practicing law in North Dakota for sixteen years. The first seven years of my career were spent working as a Special Assistant Attorney General and Assistant Morton County State's Attorney. For the last nine years I have been in private practice in Bismarck. My law practice is focused almost entirely on criminal defense. I am a past president of the North Dakota Association of Criminal Defense Lawyers and the State Bar Association's representative to the Commission on Legal Counsel for Indigents. **I personally oppose H.B. 1492 as it is currently written.**

I agree with creating a statutory definition of mental injury. Some prosecutors in North Dakota have taken advantage of the fact there is not a definition of mental injury to charge parents with child abuse in cases where children are "sad" or "depressed." A few years ago, I was involved in a case where my client and her husband were charged with child abuse based on mental injury. The allegations against them included making the husband's son put soap in his mouth when he swore, posting a video of the son sleeping in church online, and not allowing the son to dye his hair purple. This made the son sad. As a result, my client and her husband were charged with child abuse and spent the weekend in jail. Ultimately, a District Judge dismissed the charges but it does not undo the fact two decent people were arrested and charged with felonies for being responsible parents. There needs to be a definition of mental injury to prevent this type of abuse of power.

But, I have strong objections to the last sentence of the proposed changes that makes witnessing domestic violence automatically "mental injury." Firstly, in North Dakota our definition of "domestic violence" is far broader than what most people think of when they hear the term. It includes crimes committed against in-laws, cousins, aunts, uncles, roommates, ex-roommates, and people that have lived together at any point. See N.D.C.C. §14-07.1-01(4). Additionally, all that is required for the commission of domestic violence in North Dakota is evidence of "pain."

A few years ago I represented a woman who got into an argument with her husband because she believed she was pregnant. They argued and she ultimately threw a tennis shoe across the room which hit him in the chest. It did not cause any visible injury but because it caused "pain" she was arrested, spent the weekend in jail, and was charged with domestic violence. In a similar case, I represented a young woman who got upset when the father of her infant child wanted to leave the house drunk at midnight to party with his friends. She threw his car keys at him and he was struck by the keys. She was arrested and pled guilty to domestic violence before retaining my services. Are these the situations we want to make into class B felonies with a mandatory year in prison? If

this bill passes that will happen. These cases often occur during heated divorce/custody battles when parents unfortunately will do whatever it takes to gain the upper hand. The proverb “all is fair in love and war” has persisted because there is much truth to it.

For these reasons I urge you to vote **DO NOT PASS** on House Bill **H.B. 1492** with the current language regarding domestic violence.

Thank You,

*Jackson J. Lofgren*

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