

SB 2107
68th Legislative Assembly
House Judiciary Committee
March 14th, 2023
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 services in North Dakota. I rise today on behalf of the Commission to provide testimony in opposition.

The Commission is concerned about the legislation as it is currently written. The Commission expressed the concern in the Senate regarding the likelihood of more trials. This position was and is based upon the bill containing mandatory sentences for preventing arrest, Simple Assault, and fleeing in a motor vehicle. The Senate amended the bill to a presumptive sentence versus a mandatory sentence. However, presumptive sentences are not found in century code outside of presumptive probation. Thus, the Commission is in a position where we don't know what would happen.

While we don't know how presumptive sentences will be handled by North Dakota State Courts, we do have reason to believe the court will treat these like minimum mandatory sentences. Thus, a defendant would be "presumptively" sentenced to 14 days in jail on a class A misdemeanor resisting arrest. This disincentivizes plea agreements and may cause more matters to go to trial. More trials take more attorney time and that does cause more expense. Proponents of the bill claim those are sunken costs. However, those costs are only sunk when handled by a public defender office or monthly contract. We have had such a level of turnover we are now having to assign a number of cases on a hourly basis. When more cases occur in an area, it will require more hourly cases, which will cost more money.

Further, the bill does not clearly define what would justify a departure from the presumptive sentence. This bill as originally written attempted to remove all discretion from the Court by imposing mandatory minimums. The latest version of presumptive

sentences appears to give the court discretion but requires them to justify the reason. This seems to be a new implementation of jurisprudence in North Dakota that could serve to severely limit judicial independence forcing trials.

Additionally, it is worth noting the academic research on minimum mandatory sentences show they do not prevent crime. Incarceration is inherently criminogenic. Individuals forced to serve county jail sentences consecutively to all other sentences often lose employment, housing, and potentially even family. This does not make them safer and more law abiding when they are returned to the community. This does not include the significant costs to county jails and state prisons.

Given the ineffectiveness of mandatory sentencing, most states, including North Dakota, have moved away from minimum mandatory or prescriptive sentencing. The national pulse has been to apply resources upstream in evidence-based and proven effective strategies to combat crime, not on back-end building of bigger prisons. North Dakota had the foresight to go through this work in 2015 in the justice reinvestment legislation and implementation of Free Through Recovery. This bill appears to significantly reduce the progress that has been made.

I have been provided a copy of some proposed amendments. The proposed amendments are a much better attempt to try and deter conduct. By restoring judicial discretion, defendants would be once again at the mercy of the court based upon individual circumstances. Further, the amendments restore the firearm to enhancements rather than create a complicated system of sentencing depending on the weapon involved.

Chairman Klemin, members of the Committee, for the reasons stated herein, the Commission on Legal Counsel urges a DO NOT PASS recommendation on SB 2107 as currently written.

Respectfully Submitted:



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