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Senate Judiciary Committee

Re: Proposed House Bill 1492

Good afternoon Chairman Larson & Members of the Committee,

My name is Stephenie Davis, I serve as a Ward County Assistant State's Attorney. Justice McEvers suggested in her concurring opinion in 2022 ND 7, State v. Castleman, "If the legislature wants to protect children from domestic violence, perhaps it should include exposure of the child to domestic violence as part of the definition of child abuse." This opinion is a large part of what prompted the need to bring House Bill 1492 to fruition. However, the bill passed out of the House after excluding the language which specifically stated "The term includes witnessing an act of domestic violence as defined in section 14 - 07.1 - 01." The definition as it now stands fails to address the mental damage children suffer as a result of exposure to domestic violence. The reason this is so important to include is because exposure to domestic violence is the only situation where the child is not the direct, but a collateral victim. Without this specific language, the State is left with the same difficulty in prosecuting cases like Castleman as it previously faced. It should also be noted the inability to prosecute a case where the child has suffered mental injury due to exposure to domestic violence directly conflicts with North Dakota Century Code 27-20.2-01(4)(a), 27-20.3-01(5), and 27-20.3-06 which allows a child to be removed from the custody of a parent or guardian and placed into the custody of the state as a child in need of protection. While these statutes offer the child protection on the civil side, they do not address the criminal. The lack of harmony in the Century Code needs to be

corrected. House Bill 1492 will address this but only by adding back in the language “witnessing an act of domestic violence as defined in section 14-07.1-01.

I want to share one heartrending story that exemplifies the importance of this language being part of the bill. I had a young family ripped apart by domestic violence. The parents fought frequently, both physically and verbally, in front of their 2 year old daughter a beautiful child nicknamed Dora. The night law enforcement, social services, and my office became involved mom and dad were once again fighting. Dora was lying between them on their bed when it got physical. Mom, who was very pregnant at the time, stabbed dad and she had marks where he punched her in the face. Thankfully, the baby and Dora were miraculously uninjured. Both parents were ultimately arrested for domestic violence and Dora was taken into care.

Before social services arrived to take custody of Dora, one of the deputies tried to interact with her. He described Dora as almost feral in her behavior. She literally pulled up her dress, squatted in the middle of the living room floor and urinated. The deputy, who was a father to children around the same age was aghast at this. He was furious at the trauma Dora suffered. But Dora showed no physical signs of abuse. She was fed, clean, and clothed. Her parents may have been physically abusive to each other but it is clear they were not physically abusive to her.

Fast forward a few months, Dora was still in foster care, but her new sibling was in the care of her biological parents. The foster family Dora was staying with have two older children. One day her foster brother and foster father were wrestling around, what you and I would consider normal horseplay. Dora became hysterically, screaming “no fight, no fight” and crying uncontrollably. Her foster father and foster brother immediately stopped the rough housing and the family rushed to assure Dora no one was being hurt, even with those reassurances, she was inconsolable. At the age of two it was clear Dora suffered the very type of mental injury witnessing an act of domestic violence as defined in section 14 - 07.1 – 01 can cause. Dora’s story has a happy ending – her foster family became her forever family. My last update is that she was a well-adjusted 5 year old who was adored by her older siblings and was blossoming in school. Thankfully, her trauma was experienced while she was very young and she could recover without many of the hurdles older children struggle with. I do not know what happened with Dora’s younger sibling and I wonder if I had been able to charge the biological parents with child abuse could social services have immediately take her into custody? Instead was another child be exposed to a domestic dispute between these parents?

I have had other cases where the outcome has ultimately not been positive. Too often, when the only recognized victim is the person who suffered physically, domestic violence cases become practically impossible to prosecute when the party does not want to hold the abuser accountable. The

physical victim ultimately allows the children to also continue to be victimized. Including language about exposure to domestic violence gives prosecutors a tool to hold the abuser accountable. When children experience mental and emotional abuse caused by domestic violence, they suffer and it shows in their behavior, school work, sleep patterns, physical health and in a myriad of other ways.

I dealt with one family constantly in upheaval. The father would drink, become verbally abusive, and sometimes violent toward his wife. They had four sons living in the house, three minors and one barely 18. The last domestic I dealt with against him got even uglier than normal. Not just fists and words were thrown, but also a knife. The boys were terrified. The oldest called 911 and reported his mom was in danger and if his step-dad knew he was on the phone, he would be too. All the kids were present in the house when the events unfolded, they all heard the fight. The two youngest did not see anything, the older two saw the knife being thrown. I charged terrorizing against the father for the immediate fear he placed his wife and the two oldest boys in. I charged child abuse against him for the mental trauma caused to all three of the minor boys. Between when I charged out the case and the preliminary hearing, mom wanted all the charges dropped and the North Dakota Supreme Court handed down the decision in Castleman. I had to drop the child abuse charges and of course once mom stated she did not want dad charged with terrorizing, both the older boys followed her lead. I literally had NOTHING of consequence I could charge him with. The inclusion of the domestic violence language rectifies this situation because this was a family where there was a lengthy record of how the boys were being impacted by the domestic violence. It was evident in how the youngest suffered separation anxiety, his next youngest brother was unable to cope with stress without getting overly emotional and in the flat effect of their older brother and his emotional detachment. Their oldest sibling was determined to never drink, moved out of the house and stopped talking with the family after mom wanted to drop the charges.

These are just two of thousands of cases prosecutors across this state deal with every day. We are in the trenches and see the child abuse happening and are currently helpless to be a voice for these victims. The loophole created by the Castleman decision has emboldened that defendant. He continues to cause trauma to his minor children because he knows there is currently nothing the State can do to hold him accountable for his behavior. I spoke with the mother of the alleged victim in the Castleman case and asked her if she would be willing to testify. Her reply was that as much as she wanted to, because her children are still minors, she thought it best not to. This is because of the fear she lives in that her abuser will continue to inflict harm on her children if she dares to speak out against his actions.

I spoke with Jane Doe who is the ex-wife of the Appellant, Brent Castleman in State v. Castleman, 2022 ND 7. She is the mother of four children with Mr. Castleman. At the time she left him on 2018, her oldest John Doe 1 was 12, John Does 2 was 11, Jane Doe 1 was 9 and her youngest daughter Jane Doe 2 was 4.

There was an incident of domestic violence in 2018 where Jane Doe was being physically abused by her spouse and both her daughters were present. In 2017 the incident which was the basis for the child abuse charge in the above referenced case took place in the bedroom of Jane Does 2 who was 3 at the time. While Jane Doe 2 was not physically harmed, there have been lasting mental and emotional damage to her.

Jane Doe stated she has returned to her abuser after leaving him, going so far as to move away in 213 because she is in fear of her kids being alone with him. He started out abusing her verbally, then it became physical, he would be verbally abusing toward the children and as the boys got older he became physical toward them as well.

In 2007 when John Doe 1 was a toddler and Jane Doe was pregnant with John Doe 2, her abuser struck her in front of her son and gave her a black eye.

The three oldest children have been diagnosed with stress disorders. The two boys specifically PTSD. The youngest, Jane Doe 2 would not sleep alone until she was almost 6. CPS has taken away the abusers unsupervised visits because of his conduct with the kids. He has not had supervised visits since August 2022 because he was suspended from the supervision center due to his continued unwillingness to abide by the rules. Her abuser has refused to go back through orientation.

What is sad is this is intergenerational. The abuser grew up in a household where his father was abusive. This behavior was learned and accepted. Jane Doe was told this was a normal part of marriage when she would try to leave. This story is the reason House Bill 1492 has been sponsored by a bi-partisan group of legislators.

Please members of the committee, I implore you revise House Bill 1492 to include language which defines mental injury to include exposure to domestic violence. With this amendment, I respectfully ask you to give House Bill 1492 a DO PASS. This will allow prosecutors to better protect some of the most vulnerable members of society. Thank you for your time.