

SB 2046
Senate Judiciary Committee
January 10, 2023
Testimony of Travis W. Finck, Executive Director, NDCLCI

Madam Chair Larson, members of the Senate 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 support of SB 2046.

SB 2046 is a bill to amend the competency to stand trial code that was updated for the first time in decades last session. This bill is a collaborative effort of the “Improving the Court and Community Response to those with Mental Illness” workgroup through the North Dakota State Court.

The first change in this bill found in section 1 deals with the Court’s response to an individual who is determined to lack fitness to proceed (other wise know as competency) when they are charged with only a class b misdemeanor. Under current statute, they can be sent for restorative treatment at the state hospital or other appropriate treatment services. This means we have individuals charged with crimes such as driving under suspension currently being sent to the state hospital if they are found to lack fitness to proceed. This has caused a tremendous log jam at the state hospital and makes it very difficult to get services to those with more serious charges.

Furthermore, there is a trend to move away from attempts to restore competency on misdemeanants. I recently had the pleasure of serving with the National Center on State Courts National Judicial Task Force to Examine State Courts’ Response to Mental Illness, where I served on the Criminal Justice workgroup. As part of that work group, we examined competency extensively and the work group, with Richard Schwermer taking the lead, published a paper titled “Leading Reform: Competence to Stand Trial Systems – A court resource.” The results of the examination were the need to limit the type of cases that should be referred for evaluations. This reality exists in North Dakota. Frequently, as I continue to work on the issue, I

get emails from the state hospital about the number of misdemeanor offenses they are being sent for evaluation.

It is not without some concern we support this change. One concern, as noted by Mr. Schwermer in the attached paper, was the danger of a bright line rule of eliminating misdemeanors from competency proceedings could leading to overcharging. This is where a prosecutor would charge a more serious offense to avoid a case being dismissed if someone had competency issues. However, in this legislation, we are not removing all misdemeanors from restoration, only class B misdemeanors. Further, the group also exempted assaults that are class b misdemeanors.

Lastly, the Supreme Court of the United States in a case titled Jackson v. Indiana in 1972 held a state must hold a defendant only for a “reasonable” time necessary to determine whether they will regain fitness. If a defendant is held for restoration, the continued commitment must be justified. In North Dakota, the court can only suspend the proceedings for thirty days on a class b misdemeanor. Often this is not enough time to restore a defendant. Even if a defendant is restored to fitness, they will likely have sat enough time in custody where they will be looking at having served a maximum sentence of 30 days. This equates to a defendant being forced to serve a maximum sentence on a b misdemeanor simply because they were determined to be incompetent. This is not the best use of state resources.

The second change to the bill allows the court to refer to any services the court deems appropriate. This change comes in the section where the Court finds based upon a report by tier 1a professionals the defendant lacks fitness to proceed and will not regain competency within the time allowed by law. In this instance, the Court is currently able to refer for the appointment of a guardian or conservator, begin civil commitment procedures, and this bill adds the other services. It is anticipated in this legislation the other services would be those that would be recommended by the professional who evaluated for fitness and deemed the individual restorable.

Madam Chair Larson, members of the Committee, thank you for the opportunity to present this testimony to you today. The Commission on legal counsel respectfully requests a do pass recommendation on SB 2046.

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'Travis W. Finck', with a stylized flourish at the end.

Travis W. Finck

Executive Director, NDCLCI