

SB 2107  
68<sup>th</sup> Legislative Assembly  
Senate Judiciary Committee  
January 4, 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 opposition to SB 2107.

The Commission is concerned about the legislation currently in front of the Committee. The concern is two-fold. First, this legislation will undoubtedly cause more cases to be tried in North Dakota State Courts. North Dakota state courts are very separate and distinct from the federal courts. In 2015, the Legislature started down the path of Justice Reinvestment which led to many evidence-based policy changes. This bill seeks to roll back many of those policy changes.

The Commission believes this legislation will leave defendants with relatively little incentive to settle cases. If a Defendant is going to be facing a county jail sentence even if they plead guilty, this will undoubtedly change the equation. Further, by creating new mandatory minimum sentences we again disincentivize resolving a case via a plea agreement. Thus, we anticipate there will be more trials.

More trials will cost more money. We have not had the opportunity to figure a fiscal note on this bill because we had not been provided a copy prior to session. However, given the number of minimum mandatory penalties included herein, there will be more trials. The concept of having more trials and more work is concerning given we are on the verge of not being able to meet our current constitutional and statutory requirements. We currently have four attorney positions for which we are recruiting across the state, which is 20% of the FT attorneys the commission employs. Further, it is becoming more and more difficult to find attorneys to provide contract services at the rate we pay. If we are now going to tell those

attorneys they are more likely to be going to trial, we may find ourselves past the rubicon of constitutional failure.

The second concern the Commission has relates to the effectiveness of mandatory minimums. The national pulse has been to move away from mandatory minimum sentences and to be smart on crime by applying resources in evidence-based attempts in dealing in the criminal justice system. As recently as 2018, Congress in a bipartisan fashion came together to pass the First Step Act. The First Step Act was an act in Congress that eliminated the stacking of mandatory minimum sentences, made it easier for judges to depart from archaic and draconian federal sentencing laws, and reduced the three strikes law. This law was signed under President Trump.

SB2107 seems to be a step in the wrong direction.

Madam Chair, members of the Senate Judiciary Committee, for the reasons stated herein, the Commission on Legal Counsel urges a DO NOT PASS recommendation.

Respectfully Submitted:



Travis W. Finck

Executive Director, NDCLCI