

SB 2248
68th Legislative Assembly
Senate Judiciary Committee
January 30, 2023
Testimony of Travis W. Finck, Executive Director, NDCLCI

Madam Chair Larson, members of the 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 delivery of public defense services in North Dakota. The Commission has several concerns with SB 2248 as it is currently written.

First off, as we have testified previously, minimum mandatory sentences have no empirical evidence or proof of effectiveness. Much of the research provides these mandatory sentences don't curb the behavior. Further research provides longer prison sentences do not decrease crime, rather it increases crime as incarceration is inherently criminogenic. Thus, many have been moving away from mandatory minimums. Even Congress, in a bipartisan legislation under President Trump, passed the first step act in 2018 which made it easier for judges to depart from federal sentencing laws that contain minimum mandatory sentences. We seem to be going backwards this session. Because mandatory minimums don't work, the Commission has concern about the cost to our agency, courts, and jails.

Secondly, this bill, as currently written prohibits plea agreements calling for the dismissal of the fentanyl charge. This could lead to outright dismissals of the whole case or lead to prosecutors not bringing the charge at all. Charges are brought when an individual is arrested. Often there is more investigation taking place that may change the evidence a prosecutor has. This bill, as currently written would prohibit a plea agreement dismissing that charge forcing a prosecutor to trial on a losing case.

Lastly, the bill as currently written significantly hampers the investigation powers of law enforcement. I know it sounds different that I would be concerned about the powers of law enforcement. Law enforcement often uses low level possession with intent and low-level dealers to serve as confidential informants to get to bigger fish. Additionally, defense attorneys often advise their clients of these possibilities. However, if the client can no longer receive a deferred sentence, the allure of providing state evidence is weakened.

Madam Chair Larson, members of the Senate Judiciary, for the reasons stated herein, the Commission on Legal Counsel urges a DO NOT PASS recommendation as this bill is currently written.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Travis W. Finck", is written over a horizontal line.

Travis W. Finck

Executive Director, NDCLCI