

HB 1528
69th Legislative Assembly
House Judiciary Committee
February 3, 2025
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 to House Bill 1528.

The Commission is concerned with the proposed changes in Section 2 of the bill. The first of those concerns is changing the culpability from intentionally starting the fire to recklessly starting the fire. This has consequences and essentially defeats the purpose of the statute. Endangering by fire or explosion is the act of using fire as a weapon. The current language requires that intentional act of starting the fire, and then considers the reckless nature of the intentional act. As written, HB 1528 would require a reckless act, and then consider the reckless nature of the reckless act. It simply doesn't work as currently written. If there is appetite to change the culpability, the committee may want to consider "knowingly or intentionally", but willful just doesn't work.

The second issue the Commission has with section 2 is an individual "under the influence" being prima facie evidence of an intent to commit this crime. This is logically inconsistent with reckless conduct. You cannot have prima facie evidence of intent when a reckless act is all that is required. Quite simply, this also conflicts with other provisions of the code dealing with culpability and an individual being under the influence. Being under the influence of alcohol or drugs is already discussed in the code in dealing with culpability. This bill would conflate being under the influence with being intoxicated, and they are two very different legal terms. NDCC 12.1-04-02 provides "Intoxication is not a defense to a criminal charge. Intoxication does not, in itself, constitute mental disease or defect within the meaning of section 12.1-04-04. Evidence of intoxication is admissible whenever it is relevant to negate or to establish an element of the offense charged." This section of the

bill would be best removed as being under the influence and intoxication regarding culpability is already established in law.

Lastly, I am unsure why there is an increase in penalty on page 2 at line 17. If an actor were to intentionally start a fire and a death resulted, it would be felony murder. This is already covered in code and is a Class AA felony under NDCC 12.1-16-01(c). If the individual were to commit a reckless act that caused a death, the code at NDCC 12.1-16-02 calls this manslaughter which is a Class B felony. If you change the section as suggested in this bill, you could end up in a scenario with different punishments for the same requirements. This could cause some multiplicity and double jeopardy concerns under the fifth amendment to the U.S. Constitution and Article I, Section 12 of the Constitution of North Dakota.

I did have an opportunity to meet with a states' attorney regarding the position they are taking. I don't believe we are that far off and believe we could work with the bill sponsor, the agent requesting the bill, and state's attorneys to resolve any differences in a short period of time.

For the reasons states herein, the Commission requests a DO NOT PASS in the current form of the bill, but would be willing to work on amendments.

Respectfully Submitted:



Travis W. Finck
Executive Director, NDCLCI