



Legislative Assembly

# North Dakota Senate

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## COMMITTEES:

Appropriations  
Appropriations - Government Operations Division

## TESTIMONY IN SUPPORT OF SB 2226

### Senate Judiciary Committee

January 27, 2025

The U.S. Supreme Court has held that (1) the Sixth Amendment to the U.S. Constitution affords an indigent person the right to court-appointed counsel in all criminal cases punishable by death or more than a year in jail or prison, including criminal contempt cases, Gideon v. Wainwright, 372 U.S. 335 (1963); and (2) an indigent defendant charged with any offense punishable by less than a year in jail or prison may not be incarcerated as a punishment unless the defendant was appointed or waived counsel, Argersinger v. Hamlin, 407 U.S. 25 (1972). In subsequent Supreme Court cases, this right to counsel was expanded to other criminal proceedings deemed a “critical stage”.

In North Dakota, the Commission on Legal Counsel for Indigents was formed by the Legislature in 2005 to manage how such criminal defense representation is provided to indigent defendants. Such services are now provided by a combination of commission staff attorneys and contracted attorneys.

Currently, legal counsel is not consistently provided at the initial appearance stage of criminal actions. At this hearing, among other decisions, the judge can determine the conditions under which a defendant may be released from custody. Because the initial appearance occurs so early in the criminal case procedurally it can be very difficult to make a prior determination that a defendant is indigent. Consequently, many defendants are unrepresented by legal counsel at this appearance.

Litigation is currently pending in at least one other jurisdiction as to whether initial appearances are a “critical stage” at which legal representation is constitutionally required. Regardless of the outcome of those cases, ensuring legal representation at initial hearings is an important change to protect the rights of criminal defendants and make our criminal justice system more efficient. In short, the system works better when all parties are represented by legal counsel.

SB 2226 would address this issue by creating a presumption that all criminal defendants are indigent for certain purposes at the initial hearing stage. This presumption would not carry over to subsequent stages of litigation if the defendant is later determined not to be indigent. My expectation is that criminal defendants who are financially able to retain their own attorneys for their initial appearance would do so.