

FISCAL NOTE
Requested by Legislative Council
12/23/2016

Bill/Resolution No.: SB 2121

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$30,000	\$(30,000)	\$30,000	\$(30,000)
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill consolidates several fees assessed in criminal cases and then allocates the associated revenues collected to identified funds based on a set percentage rather than a specific dollar amount assessed for each fee.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 takes away the continuing appropriation authority for the restitution collection assistance fund. The Court System collects approximately \$30,000 per biennium from this revenue source. The funding is used to defray expenses incident to the collection of restitution. The funding would go to the State General Fund.

Section 2 increases the court administration fees assessed based on the criminal charge. The revised fees would replace the community service supervision fee and the additional \$100 court administration fee assessed in all criminal cases except infractions. Revenues collected from the revised fees would be allocated to the State General Fund, indigent defense administration fund, court facilities improvement fund and community service supervision fund based on the percentages outlined in Section 2.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The proposed fee change and percentage allocation is based on actual revenues received over a five year period in order to keep the funds revenue neutral. The only impact would be the loss of revenue to the restitution collection assistance fund which is offset by an equal increase in State General Fund revenues.

Marsy's law was implemented on December 15, 2016. This law changes the priority schedule for applying moneys collected to the various fees assessed. Restitution was moved from the number 4 funding priority to the number 1 priority. It is possible that the change in the priority schedule will have an impact on the criminal fees identified in this bill, but that impact cannot be determined.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Don Wolf

Agency: Court System

Telephone: 328-3509

Date Prepared: 12/28/2016

2017 SENATE JUDICIARY

SB 2121

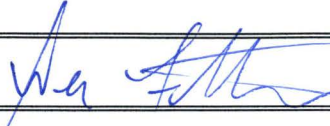
2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2121
1/9/2017
26677

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to costs for insufficient funds checks and assessment of court fees; to repeal code relating to compromise of judgments for court fees and costs by county commissioners; and to provide an effective date.

Minutes:

Testimony attached #

1, 2

Chairman Armstrong called the committee to order on SB 2121. All committee members were present.

Sally Holewa, State Court Administrator – Testified in support of the bill (see attachment 1)

Chairman Armstrong – Said restitution makes him think of Marcy's Law. Chairman Armstrong discussed a brief overview of Marcy's law.

"Did anybody look at this to make sure it didn't conflict with Marcy's law?"

Sally Holewa: "We looked but weren't sure."

Sally Holewa – Continued her testimony (see attachment 1)

Chairman Armstrong: "Has anybody in the Supreme Court quantified what type of financial impact this is going to have?"

Sally Holewa: "Our person in the Supreme Court was unable to do that."

Jean Delaney, Executive Director of the Commission on Legal Counsel for Indigents – Testified in opposition to the bill (see attachment 2.)

Chairman Armstrong: "Can you explain to the committee how, for instance, someone gets assessed fees, and say they are on supervised probation for 4 years and they still owe fines and fees in the amount of \$1200 when they're done. Sally said it gets turned into a civil judgement. Can you explain how that works?"

Jean Delaney: "Sally may be to answer that better than me."

Chairman Armstrong: "Skip that question for now. How has your funding gone this last biennium? Due to the Dakota Access Pipeline protest you guys had to ask for a Deficiency Appropriations, is that correct?"

Jean Delaney: "That, and the passing of Marcy's Law, yes. We are not sure how much less we will get, but we do know we will get less than before, we calculated we'd get about 20% less."

Chairman Armstrong: "Do you have any lawyer openings, open offices?"

Jean Delaney: "No. Well, one opening in Fargo."

Chairman Armstrong: "How much of your work is on contract right now?"

Jean Delaney: "Approximately 70 contractors, and about 80-90 hourly conflict contractors which includes some of the monthly contractors."

Chairman Armstrong: "Did you have to ask for a Deficiency Appropriations at the last Interim?"

Jean Delaney: "We did, and we were granted it."

Senator Larson: "I did hear something in the news about the courts trying to make sure the people that are applying for the indigent defense really need it and don't have access to their funds, is that something that's kind of ongoing?"

Jean Delaney: "It is. The commission has always done a good job making sure services are only provided to those who are truly indigent."

Jean explained the process in confirming those receiving services are indigents.

Chairman Armstrong: "Is 26% of what they currently collect, how does that equate to what you received?"

Jean Delaney: "We think it would be less."

Senator Nelson: "I'm a little bit confused about the order in which things get paid? And if the restitution is very large, are those fees going to get paid?"

Chairman Armstrong: "I can tell you from experience the answer is no. Very often anyway."

Senator Nelson: "Most things you apply for you have to pay for up front, except this. It doesn't seem like a good business model to me?"

Jean Delaney: "Restitution is our first priority, but there's a lot of unknowns there, but it will get collected before everything else."

Chairman Armstrong closed the hearing on SB 2121
No motions were made.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2121 Committee Work
1/16/2017
26922

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to costs for insufficient funds checks and assessment of court fees; to repeal code relating to compromise of judgments for court fees and costs by county commissioners; and to provide an effective date.

Minutes:

No written testimony

Chairman Armstrong called the committee to order on SB 2121. All committee members were present.

Chairman Armstrong reiterated the bill, discussed the purpose of the bill which is streamlining fees, which saves time on data entry at the Supreme Court level.

"I think it's important to understand from the indigent point of view, they use to get all the money off the top, now they are down to 20%. Most of those fees are for felony cases, most felony cases carry significant jail time. If those fees get paid they usually get paid years later so the vast majority of these fees are born on misdemeanor offenses. The indigent defense is opposed to getting 20%. I think we should let Marsy's Law play out a little bit before we do this. We're going to have to make up that fund somewhere. It's one of those bills that has an interesting trajectory. The question is, are we really streamlining anything?"

Senator Nelson: "I don't get the data entry problem. They have to put the name and other data in a database for many areas, so it can't be that time consuming, in my opinion."

Chairman Armstrong: "We should get this bill in the best shape we can; make sure it's not all or nothing. Under indigent circumstances, you can wave part of the fee."

Chairman Armstrong proposed amending the bill on Page 5, Line 27, by changing "A court may waive" to "A court may waive all or part of."

Senator Larson motioned to Adopt the Amendment. **Senator Myrdal** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0
The motion carried.

Senator Nelson motioned for a Do Not Pass as Amended. **Senator Luick** seconded.

A Roll Call Vote was taken. Yea: 3 Nay: 3 Absent: 0
The motion failed.

Senator Nelson: "Can we go straight to "Without Recommendation" or do we have to go through a Do Pass first?"

Senator Luick: "You have to do Do Pass first."

Senator Larson motioned for a Do Pass as Amended. **Senator Osland** seconded.

Discussion followed.

Senator Larson: "What persuaded me for a Do Pass is that this seems to be an important thing for the Supreme Court, as Chairman Armstrong said, and they keep bringing it back for discussion. That is why I'm voting in favor of the bill instead of opposing the bill."

Senator Luick: "The reason I'd go no on this bill is because if there is more information or changes that are going to come out in Marsy's Law, then maybe we need to evaluate what is going to happen there first before we can decide here?"

Chairman Armstrong: "My final take on this is that the more money indigent defense gets through special funds the less we have to fund in general appropriations. I do know this bill was written before Marsy's Law was passed. I won't take a motion for Without Recommendation until next week after everyone gets a Marsy's Law overview course which happens Wednesday. We can re-discuss this bill next week and decide then on the final motion. But we do need to act on Senator Larson's motion for a Do Pass."

A Roll Call Vote was taken for a Do Pass as Amended. Yea: 3 Nay: 3 Absent: 0
The motion failed.

Senator Osland: "If it weren't for Marsy's Law, Mr. Chairman, what is your opinion for this?"

Chairman Armstrong: "If the 20% that indigent defense is getting equates to roughly the same as what they were getting out of the current format, then I'd say yes, streamline it. It's 21% or whatever so you can just breakdown what has been collected. I think that breakdown is a fake number right now and that's my problem with it."

Senator Myrdal: "I just want it on the record that I have the same sentiments as Senator Nelson."

Chairman Armstrong closed the hearing on SB 2121.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2121 Committee Work
1/23/2017
27236

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to costs for insufficient funds, checks, and assessment of court fees; to repeal code relating to compromise of judgments for court fees and costs by county commissioners; and to provide an effective date.

Minutes: **No written testimony**

Chairman Armstrong called the committee to order SB 2121. All committee members were present. Chairman Armstrong discussed his thoughts on the bill.

"I think Marsy's Law changes things here. We are constitutional obligated to pay for indigent defense at an adequate level, otherwise we start running into problems that nobody wants to have. So that's where we're at."

Senator Larson: "I am ready to change my vote on this. At first I supported it because they have been bringing it back every session for a while which made me want to support it, I figure they must have a good reason to keep bringing it back. However, because of Marsy's Law and the uncertainty with that, after 2 years if they still think it should be brought back in another form, then maybe at that time we can revisit it since there will be more information."

Senator Larson motioned Do Not Pass. **Senator Nelson** seconded.

Discussion followed:

Senator Myrdal: "I agree with Senator Larson's sentiments that it needs to be revisited in the future."

Senator Nelson: "When they finally came out and said we won't even get the application fee, the whole thing has to come out of the general fund now, because they have to have something to operate on. It's going to be a long time after restitution and the previous things before they even get a dime."

Chairman Armstrong: "Currently, before Marsy's. the way it worked was they got the \$35 application fee, that doesn't go to anybody else. Then they also get the first 750 thousand dollars off the top before anything goes. At the end of the day we the reality is that we don't

know how Marsy's Law is going to affect this. I have a suspicion that we are going to send some things down to appropriations and force some tough decisions on them. The Supreme Court has better things to do than data entry and this bill will help them out in that regard, but I think that at the end of the day the committee is making the right decision."

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Nelson carried the bill.

Chairman Armstrong closed the hearing on SB 2121 committee work.

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2121

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Larson Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Osland	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

To amend Page 5, Line 27, by changing "A court may waive" to "A court may waive all or part of."

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2121**

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Nelson Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Osland		X
Vice-Chair Larson		X			
Senator Luick	X				
Senator Myrdal		X			
Senator Nelson	X				

Total (Yes) 3 No 3

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2121**

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Larson Seconded By Senator Osland

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong		X	Senator Osland	X	
Vice-Chair Larson	X				
Senator Luick		X			
Senator Myrdal	X				
Senator Nelson		X			

Total (Yes) 3 No 3

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2121**

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Larson Seconded By Senator Nelson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Osland	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2121: Judiciary Committee (Sen. Armstrong, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2121 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

SB 2121

①

**Senate Bill 2121
Senate Appropriations Committee**

**Presented by Sally Holewa
North Dakota State Court Administrator**

January 9, 2017

Good morning, Chairman Armstrong and members of the Committee. For the record, my name is Sally Holewa. I am the State Court Administrator. I am here today to testify in support of Senate Bill 2121.

Senate Bill 2121 would consolidate two fees designed to raise revenue for specific programs and consolidate them with the Court Administration fee. The bill renames the Court Administration fee to "Court Fee". The bill is intended to address the difficulties associated with collecting and disbursing multiple fees. It would also eliminate a continuing appropriation for the restitution collection assistance fee and redirect the fee to the general fund.

Currently, there are 7 fees that can be assessed against a defendant, depending on the charge, the jurisdiction, and the specific sentence. We estimate that under the current system of individual fees this requires judges and court staff to consider the fees 6 times for each criminal case. While these considerations are not necessarily time consuming, they do open the door for mistakes to be introduced into the system. Consolidating just two of these fees can save judges and court staff up to 345,000 decision-making points or actual computer transactions per year. It will save time by eliminating the need for some manual calculations in the courtroom and simplify the clerk's overall bookkeeping duties. A single fee with a percentage allocation will save programming costs and staff time in the future if the state decides to fund more programs or change the amounts dedicated to each program.

The two fees that we are requesting be consolidated are:

Indigent Defense/Court Facility Fee 29-26-22(2):

Purpose: To provide additional funding for Indigent Defense and to fund grants to the counties to offset the cost of courthouse maintenance and improvement

Amount: \$100

Assessed: Persons convicted of a crime for which the maximum penalty imposed includes imprisonment

Allocation: The first \$750,000 collected during the biennium is deposited with the state in the Indigent Defense Administration Fund as a continuing appropriation to the Commission on Legal Counsel for Indigents. The next \$460,000 is deposited with the state in the Court Facilities Improvement and Maintenance Fund as a continuing appropriation to the Judicial Branch for the purpose of providing grants to the counties. After these thresholds are met, all other deposits are split equally between the funds.

Community Service Supervision Fee 29-26-22(3):

Purpose: To provide funding to private community corrections agencies¹

Amount: \$25

Assessed: Persons required to perform community service work as part of their sentence.

Allocation: Deposited with the state in the Community Service Supervision Fund. The Department of Corrections and Rehabilitation may access the fund, subject to legislative appropriation, for the purpose of providing grants to private providers who maintain community service programs.

In addition to consolidating the fees listed above, the bill would re-allocate the Restitution Collection fee.

Restitution Collection Fee 12.1-32-08 (2)

Purpose: To defray the cost of collecting restitution

Assessed: Persons convicted of issuing checks without sufficient funds or without an account

¹ Currently there are 14 private providers in the state: Barnes, Bismarck (urban), Bismarck (rural), Devils Lake, Fargo, Grand Forks, Jamestown, Minot, Richland County, Rugby, Sargent County, Wells County and Williston

Amount: Either \$10 or 25% of the restitution ordered, whichever is greater, but not to exceed \$1,000

Current Allocation: Retained by the county if the county is responsible for restitution collection (applies only to the counties of Burleigh, Cass, Grand Forks and Ward), otherwise deposited with the state in the Restitution Collection Assistance Fund as a continuing appropriation for the court.

Proposed Allocation: Those counties collecting restitution would continue to retain this fee. Would abolish the Restitution Collection Assistance Fund so fees collected by the state-employed clerks of court under this statute would be deposited in the General Fund.

Our goal in drafting this bill is to ensure that it is revenue neutral. Under this proposal, the dedicated funding for the programs currently receiving court-imposed fees would be replaced by an allocated percentage of the monies collected from imposition of the proposed single court fee. The proposed percentages were calculated based on the average fees collected over several years. To mitigate against any loss of revenue SB 2121 raises the fees assessed under the current Court Administration fee as shown in the chart below.

Level of Conviction	Current Fee	Proposed Fee
Class B Misdemeanor	\$125	\$250
Class A Misdemeanor	\$200	\$400
Class C Felony	\$400	\$600
Class B Felony	\$650	\$800
Class A/Class AA Felony	\$900	\$1,000

It should be noted that although the dollar amounts for the court fee are higher than the current court administration fees, it may or may not be higher than what individual defendants are currently being assessed. For example, under the current statutes, depending on the charge and sentence, a person charged with a class B misdemeanor could be assessed:

Defendant 1	Defendant 2	Defendant 3
Court Admin. Fee \$125	Court Admin. Fee \$125	Court Admin. Fee \$125
<u>Ind. Def./Facility \$100</u>	<u>Ind. Def./Facility \$100</u>	<u>Ind. Def./Facility \$100</u>
Total \$225	<u>NSF check fee \$ 25</u>	Victim Witness \$ 25
	Total \$250	<u>Community Service\$ 25</u>
		Total \$275

Because most defendants are not able to pay in full on the date of sentencing, they are given a payment plan. When the court receives a payment, it is split based on the priority schedule adopted by the court's Administrative Council (see attached). The Administrative Council includes the Chief Justice and one other justice, the 8 presiding judges of the districts and 8 other district court judges and a member of the state bar association.

This bill differs from previous proposals in that it excludes the victim-witness fee, the Indigent Defense Application Fee and Indigent Defense Recoupment. The current proposal was reviewed and approved by the Judicial Conference which is a statutory body whose membership includes all North Dakota district court judges. It was discussed with the Association of Counties and it is my understanding that they have no objection to it in its current form. The proposal was provided to the Commission on Legal Counsel for Indigents for review. I have not heard whether their governing board or their Executive Director has any objection to the bill in its current format.

A fiscal note has been filed which shows a \$30,000 reduction in the Restitution Collection Assistance Fund and corresponding increase in the General Fund. We were unable to assess the potential impact that the Marsy's Law mandate of restitution first may have on the current rate of collection for the fees that are used to fund specific programs.

Fees Assessed in Criminal Cases

Criminal Court Administration Fee	
Class B Misdemeanor	\$125
Class A Misdemeanor	\$200
Class C Felony	\$400
Class B Felony	\$650
Class A or AA Felony	\$900
Indigent Defense/Court Facility Fee	\$100
Indigent Defense Application Fee	\$35
Indigent Defense Recoupment	
Misdemeanor	\$300
Felony	\$575
Appeal	\$2,250
Post-Conviction Relief	\$1,125
Victim Witness Fee	\$35
Community Service Fee	\$25
NSF Fee	\$10 or 25% whichever is greater

Priority of Funds Collected by Clerk of Court

(Effective December 6, 2016)

<u>Order of Priority</u>	<u>Description</u>
1.	Restitution
2.	Indigent Defense Application Fee (\$35)
3.	Defense/Facility Administrative Fee (\$100)
4.	Victim/Witness Fee (\$25)
5.	Fines/Forfeitures (State Common School)
6.	Criminal/Court Administrative Fee (State General Fund)
7.	NSF Costs – County (Revenue for technology to entities who collect restitution)
8.	NSF Costs - State
9.	Community Supervision Fee (\$25)
10.	Indigent Defense Recoupment
11.	Series City Transfer Cases
12.	Accrued Child Support

2

SB No. 2121
Senate Judiciary Committee, January 9, 2017
Testimony by H. Jean Delaney

Good Morning. My name is Jean Delaney, and I am the Director of the Commission on Legal Counsel for Indigents.

The Commission has traditionally been funded only through general fund dollars and through fees paid by defendants. This biennium has been a bit different, in that we were also granted a one-time appropriation of \$200,000 from the strategic improvements fund. The defendant paid fees are the \$35 application fee set forth in NDCC § 29-07-01.1, and the \$100 court administration fee (the "indigent defense/facility improvement fee") set forth in §29-26-22 (2). The application fee, and the Commission's portion of the indigent defense/facility improvement fee go into our special fund, the indigent defense administration fund. Each biennium, about \$1.6 to 1.7 million from the indigent defense/facility improvement fee paid by defendants has been collected in that fund. The Court can waive fees under certain circumstances, but historically, the collection of this fee has been fairly consistent, and we count on that funding to meet our budget.

The Courts can order defendants to reimburse attorney fees, however, these amounts go into the general fund, not the indigent defense administration fund.

Senate Bill 2121 proposes to consolidate several fees, including the indigent defense/facility improvement fee, into one larger fee. The application fee is not included as part of the bill.

Bills similar to SB No. 2121 have been brought previously before the Legislature. We do understand the motivation behind the proposed legislation and appreciate the Court's efforts for efficiency and simplicity. However, what concerned me before, and continues to concern me about the consolidation of the various fees into one super fee, is what the practice may be by the various courts regarding waiver of the fee. We simply don't know at this time whether there will be any difference, whether the judges will be more inclined to impose it, or whether the judges will waive it at a greater rate than they do now, because a

single, larger fee seems somehow more imposing for an indigent person.

Another unknown is how it will effect collections from the defendant. Will the defendants be more inclined to just give up on paying the larger fee, while they would be more willing to pay off smaller multiple fees, whittling away at them?

A new concern is the effect of Marsy's Law on the collection of fees. Before the passage of Marsy's Law, the indigent defense application fee was paid first in priority from funds collected from a defendant, and the indigent defense/facility improvement fee was second in priority for payment. The victim/witness fee was third, and restitution was forth. After Marsy's Law, restitution is now paid first, and collection of money for other fines and fees will be delayed, and some amount less will likely be collected from the defendants for the fees. With SB 2121, the other amounts in this super fee will all be given the same priority for distribution, so less will likely go to the Commission's indigent defense administration fund.

I stand before you right now, very concerned about the possible effects of this legislation on the funding for the Commission, in itself and in conjunction with Marsy's Law. The Commission relies on the indigent defense administration fund to help run the agency.

If the bill moves forward, I respectfully request the Committee to consider modifying the language on lines 27-29 of page 5, to provide that the court may waive "all or part" of the fee upon a showing of indigency, rather than may waive "the fee" to clarify that the entire fee need not be waived.

Thank you for your time. I stand available to answer any questions.

Dated this 9th day of January, 2017



H. Jean Delaney, Director, NDCLCI
P.O. Box 149, Valley City, ND 58072
701 845-8632 jedelaney@nd.gov